

1 09:32AM UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA UNITED STATES OF AMERICA : : Plaintiff, : Criminal Action : No. 10-739M-11 v. : : LIEUTENANT DANIEL CHOI, : August 30, 2011 : 9:45 a.m. : : Defendant. : Washington, D.C. : : MORNING SESSION TRANSCRIPT OF BENCH TRIAL PROCEEDINGS BEFORE THE HONORABLE JOHN M. FACCIOLA, UNITED STATES MAGISTRATE JUDGE APPEARANCES: For the United States: Angela S. George, Assistant U.S. Attorney U.S. ATTORNEY'S OFFICE 555 Fourth Street, NW Room 4444 Washington, DC 20530 (202) 252-7943 Fax: (202) 514-6010 Email: Angela.george@usdoj.gov For the Defendant: Robert J. Feldman, Esq. 14 Wall Street, 20th Floor New York, NY 10005 (917) 657-5177 Email: robertjfeldman@aol.com Norman Elliott Kent, Esq. KENT & CORMICAN, PA 110 SE 6th Street Suite 1970 Fort Lauderdale, FL 33301 (954) 763-1900 Email: Norm@normkent.com Scott L. Wallace, RDR, CRR, Official Court Reporter (202) 354-3196 * swallace.reporter@gmail.com	3 1 <u>MORNING SESSION, AUGUST 30, 2011</u> 09:47AM 2 THE COURT: Good morning. 09:47AM 3 MR. FELDMAN: Good morning, Your Honor. 09:47AM 4 MS. GEORGE: Good morning, Your Honor. 09:47AM 5 THE COURTROOM CLERK: Please be seated, everyone, and come 09:47AM 6 to order. 09:48AM 7 MS. GEORGE: Your Honor, Court's indulgence. I'm looking 09:48AM 8 for some documents. 09:48AM 9 THE COURT: Is it possible to get your witness in here to 09:48AM 10 get him sworn? 09:48AM 11 MS. GEORGE: Your Honor, the government isn't calling any 09:48AM 12 additional witnesses. 09:48AM 13 THE COURT: Oh. 09:48AM 14 MS. GEORGE: I just had some preliminary matters to 09:48AM 15 resolve with the Court, and I had a file with the document that 09:48AM 16 was at issue. 09:48AM 17 THE COURTROOM CLERK: I'll go ahead and call the case. 09:48AM 18 THE COURT: Sure. Thank you. 09:48AM 19 THE COURTROOM CLERK: This is criminal case year 2010, 09:48AM 20 10-799-M, United States versus Lieutenant Daniel Choi. Angela 09:48AM 21 George for the government, Robert K. Feldman for the defendant. 09:48AM 22 MR. FELDMAN: Good morning, Your Honor. 09:48AM 23 THE COURT: Good morning. 09:49AM 24 THE COURTROOM CLERK: This is a criminal trial, day 2. 09:49AM 25 THE COURT: Yes, Ms. George. Scott L. Wallace, RDR, CRR, Official Court Reporter (202)354-3196 * swallace.reporter@gmail.com
2 Court Reporter: Scott L. Wallace, RDR, CRR Official Court Reporter Room 6503, U.S. Courthouse Washington, D.C. 20001 202.354.3196 swallace.reporter@gmail.com Proceedings reported by machine shorthand, transcript produced by computer-aided transcription. Scott L. Wallace, RDR, CRR, Official Court Reporter (202)354-3196 * swallace.reporter@gmail.com	4 09:49AM 1 MS. GEORGE: Your Honor, I confirmed with Ms. Coln the 09:49AM 2 exhibits that have been introduced into evidence, and the 09:49AM 3 government does not agree -- I mean does agree with her record, 09:49AM 4 and I put an initial by each notation that she has on her exhibit 09:49AM 5 list, Your Honor, at this point in time. 09:49AM 6 THE COURT: Thank you so much. 09:49AM 7 MS. GEORGE: In addition to that, the government called 09:49AM 8 Officer Fermaint yesterday to testify. 09:49AM 9 THE COURT: Yes. 09:49AM 10 MS. GEORGE: And I think on August 12th I e-mailed 09:49AM 11 Mr. Lynn Officer Fermaint's material, and I wanted to ensure that 09:49AM 12 Mr. Feldman has received those documents. I made an assumption 09:49AM 13 that he had those documents because I provided them -- 09:49AM 14 THE COURT: I'm sorry, who is Mr. Lynn? 09:49AM 15 MS. GEORGE: Defense counsel's former counsel. 09:49AM 16 THE COURT: Oh, I see. 09:49AM 17 MS. GEORGE: At the time when I delivered discovery as 09:49AM 18 well as <i>Jencks</i> on August 12th. So I made the assumption 09:49AM 19 yesterday he had -- I didn't give it to him because I made that 09:49AM 20 assumption. And before the government closes its case-in-chief, 09:50AM 21 I want to ensure that he had the <i>Jencks</i> and had the opportunity 09:50AM 22 to cross-examine Officer Fermaint with the benefit of the <i>Jencks</i> 09:50AM 23 material. 09:50AM 24 THE COURT: Thank you. Yes. 09:50AM 25 MR. FELDMAN: Um, I'm done with Officer Easter. Scott L. Wallace, RDR, CRR, Official Court Reporter (202)354-3196 * swallace.reporter@gmail.com

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09:50AM 1 MS. GEORGE: Not officer Easter, Officer Fermain. That's
09:50AM 2 the hearing officer.
09:50AM 3 MR. FELDMAN: Yes. I received no Jencks material and, as
09:50AM 4 a matter of fact --
09:50AM 5 THE COURT: Well, where is your predecessor counsel?
09:50AM 6 Didn't he get you the file?
09:50AM 7 MR. FELDMAN: Yes.
09:50AM 8 MS. GEORGE: And Your Honor, I was -- that's why I was a
09:50AM 9 little frustrated when the Court took the bench because I had a
09:50AM 10 file that I brought, that I thought I brought over. I had a copy
09:50AM 11 of material for Mr. Feldman. I apparently left it on my office
09:50AM 12 desk. I apologize for that, but I believe I have extra copies
09:50AM 13 here. I can give it to him.
09:50AM 14 THE COURT: Please do so.
09:50AM 15 MR. FELDMAN: Let me tell you what's relevant about that.
09:50AM 16 I received a very courteous call from the officer in question
09:50AM 17 last night, and I told him personally that I was done with him
09:50AM 18 but I wasn't sure if Ms. George was, and I asked him to call Ms.
09:50AM 19 George.
09:50AM 20 THE COURT: Okay.
09:50AM 21 MR. FELDMAN: So the issue is moot, Judge.
09:50AM 22 THE COURT: Thank you.
09:51AM 23 MS. GEORGE: And in reference to that, the government --
09:51AM 24 the only -- the last exhibit that the government wants to offer
09:51AM 25 is Government's Exhibit Number 13, and I talked to Mr. Feldman

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09:51AM 1 about that today, as well as a few days ago, and he said he was
09:51AM 2 stipulating to the authenticity of the exhibit. What it is, Your
09:51AM 3 Honor, it is a YouTube video of Mr. Choi along with Mr. -- I
09:51AM 4 believe --
09:51AM 5 MR. FELDMAN: Captain Pietrangelo.
09:51AM 6 MS. GEORGE: Mr. Pietrangelo.
09:51AM 7 MR. FELDMAN: Captain Pietrangelo.
09:51AM 8 MS. GEORGE: -- in front of the D.C. Superior Court making
09:51AM 9 a statement after Mr. Choi was arrested on March 18th, 2010.
09:51AM 10 What I also discussed with Mr. Feldman is that the
09:51AM 11 government would ask the Court to take judicial notice that
09:51AM 12 Mr. Choi was arrested on March 18th, 2010 and that he was
09:51AM 13 released from D.C. Superior Court, thereby able to make the
09:51AM 14 statement in front of the courthouse on March 19th, 2010.
09:51AM 15 MR. FELDMAN: So be it.
09:51AM 16 THE COURT: So be it. Thank you.
09:51AM 17 MS. GEORGE: And I will -- so, is the government
09:52AM 18 concluding that the exhibits are admitted -- I mean, is the court
09:52AM 19 concluding that?
09:52AM 20 THE COURT: It is.
09:52AM 21 MS. GEORGE: I will provide a copy and play that exhibit.
09:52AM 22 THE COURT: You're going to play it now? Ms. George,
09:52AM 23 you're going to play the exhibit?
09:52AM 24 MS. GEORGE: I intend to, if it's not with the materials
09:52AM 25 that I left on my office desk.

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09:52AM 1 THE COURT: All right.
09:52AM 2 MR. FELDMAN: We have copies.
09:52AM 3 THE COURT: If you wish, you can retrieve it later and I
09:52AM 4 can see it then. It's in evidence, so I can see it at my
09:52AM 5 leisure, assuming I have any.
09:52AM 6 MS. GEORGE: At this point in time, the government rests.
09:52AM 7 THE COURT: All right. The government, having rested, is
09:52AM 8 there a motion?
09:52AM 9 MR. FELDMAN: Yes. We move to dismiss because the
09:52AM 10 government has failed to prove the one count beyond a reasonable
09:52AM 11 doubt as a matter of law, even in the light most favorable to the
09:52AM 12 government. Do you wish argument?
09:52AM 13 THE COURT: No, I don't, no. The motion is denied.
09:53AM 14 You have the cases? You have the cases?
09:53AM 15 MR. FELDMAN: Absolutely. Dan Choi calls Captain James
09:53AM 16 Pietrangelo.
09:53AM 17 THE COURT: Captain Pietrangelo, please.
09:53AM 18 MR. FELDMAN: Sorry, Judge.
09:53AM 19 THE COURT: He doesn't look like a captain.
09:53AM 20 MR. FELDMAN: He's going to get him.
09:53AM 21 THE COURT: His hair is much too long for a captain.
09:53AM 22 (JAMES E. PIETRANGELO, DEFENDANT'S WITNESS, SWORN.)
09:55AM 23 MR. FELDMAN: Thank you, Your Honor.
09:55AM 24
09:55AM 25

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09:55AM 1 DIRECT EXAMINATION OF JAMES E. PIETRANGELO
09:55AM 2 BY MR. FELDMAN:
09:55AM 3 Q. Good morning, sir. Please state your name and your
09:55AM 4 county of residence?
09:55AM 5 A. James E. Pietrangelo II. My last name is spelled
09:55AM 6 P-I-E-T-R-A-N-G-E-L-O, and I reside in Cuyahoga County, Ohio --
09:55AM 7 I'm sorry, Lorain County, Ohio.
09:55AM 8 Q. Very briefly, what year were you born?
09:55AM 9 A. 1965.
09:55AM 10 Q. And what -- you graduated from college?
09:55AM 11 A. Yes.
09:55AM 12 Q. What college?
09:55AM 13 A. Miami University of Ohio.
09:55AM 14 Q. What degree is that?
09:55AM 15 A. Bachelor of Arts in history and Latin.
09:55AM 16 Q. And do you have any subsequent education?
09:55AM 17 A. Yes.
09:55AM 18 Q. What is that?
09:55AM 19 A. I obtained a J.D. from Case Western Reserve University
09:55AM 20 school of law in Cleveland, Ohio.
09:55AM 21 Q. What year was that?
09:55AM 22 A. That was 1996.
09:55AM 23 Q. And after 1996, what did you do after you got your J.D.?
09:56AM 24 A. I practiced law as a civilian and I also practiced law as
09:56AM 25 a Jag officer in the U.S. Army.

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09:56AM	1	Q.	And did you -- when did you enlist? Let me go back.
09:56AM	2		When did you first enlist into the Army?
09:56AM	3	A.	In 1989.
09:56AM	4		MR. FELDMAN: I'm sorry, I'm a little out of order here,
09:56AM	5		Your Honor.
09:56AM	6	Q.	So you enlisted in 1989, and tell us in your own words,
09:56AM	7		just tell me what you were doing from '89 to '96. Let's do it
09:56AM	8		that way.
09:56AM	9	A.	I did a four-year term in the U.S. Army as an infantry
09:56AM	10		soldier, an enlisted soldier. I was stationed in Germany in
09:56AM	11		Fort Polk, Louisiana for two years and Germany for two years for
09:56AM	12		a total of four years.
09:56AM	13		During my tour in Germany, I deployed to Kuwait and Iraq
09:56AM	14		where I served in Operations Desert Shield and Storm, saw combat
09:57AM	15		with my unit for five days. When I was at Fort Polk, I
09:57AM	16		volunteered to be an investigator with the Army criminal
09:57AM	17		investigative --
09:57AM	18	Q.	As an attorney?
09:57AM	19	A.	No, this was as an enlisted infantry soldier. The Army
09:57AM	20		CID is the equivalent of the FBI for the Army, and I was still
09:57AM	21		an infantry soldier, and I wasn't sure whether I wanted to stay
09:57AM	22		in that MOS, so I asked if I could do training to be a CID agent
09:57AM	23		and they allowed me to serve as an investigator on the drug
09:57AM	24		suppression team where I conducted undercover drug sting
09:57AM	25		operations with other members of the team.
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09:57AM	1	Q.	Did you ever actually do undercover yourself?
09:57AM	2	A.	Yes, several times, buying cocaine and marijuana. Other
09:57AM	3		times I was on the over watch team, the surveillance team.
09:57AM	4	Q.	The backup guys?
09:57AM	5	A.	That's right. But the head of the drug suppression team
09:58AM	6		also investigated major --
09:58AM	7		MS. GEORGE: Your Honor, I'm going to object to this
09:58AM	8		extensive --
09:58AM	9		THE COURT: That's all right. I'm learning something
09:58AM	10		about him. Go ahead.
09:58AM	11		THE WITNESS: The head of the drug suppression team, the
09:58AM	12		warrant officer, he also did major crimes when he was needed, so
09:58AM	13		along with him I investigated -- helped investigate murder, a
09:58AM	14		murder case, a rape case, a suicide case, other sort of high --
09:58AM	15		other felony cases.
09:58AM	16		BY MR. FELDMAN:
09:58AM	17	Q.	Let's proceed chronologically. What was your next billet
09:58AM	18		after that?
09:58AM	19	A.	I completed my four-year term in '93, and I immediately
09:58AM	20		went to law school which was three years, graduated in '96 with
09:58AM	21		my J.D. I did some traveling, so I didn't take the bar until
09:58AM	22		'99, was admitted to the bar of Ohio, and almost immediately
09:58AM	23		began -- I joined a law firm.
09:58AM	24	Q.	What kind of law firm briefly?
09:58AM	25	A.	A defense insurance law firm.
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09:58AM	1	Q.	A big ol' law firm?
09:58AM	2	A.	Big law firm.
09:58AM	3	Q.	White shirt?
09:59AM	4	A.	Yes, sir, Ulmer & Berne.
09:59AM	5	Q.	Say it again.
09:59AM	6	A.	Ulmer and Berne, U-L-M-E-R, and Berne is B-E-R-N-E. And
09:59AM	7		I was with them for approximately a year. Then I switched to a
09:59AM	8		small boutique firm called David Douglas & Associates, general
09:59AM	9		practice of law for the individual, corporate law, family law,
09:59AM	10		financial law, that type of thing. Then I went on my own solo
09:59AM	11		practice, spent most of my time on an eminent domain case where
09:59AM	12		I was defending the property owners, and then I took a
09:59AM	13		commission in 2001 as a Jag officer with the Army. That was a
09:59AM	14		three-year obligation.
09:59AM	15	Q.	Let's slow down. I don't want to rush you here. We're
09:59AM	16		getting more recent, so with the Court's indulgence, tell me
09:59AM	17		about what you were doing in 2001, 2003 in a little more detail.
09:59AM	18		I care more about -- I assume that the Court cares more about
09:59AM	19		what you were doing there than what you were doing for some big
10:00AM	20		ol' law firm. Let's talk about that.
10:00AM	21	A.	My primary duty was as an operational law attorney with
10:00AM	22		the 10th Mountain Division. I was responsible for advising the
10:00AM	23		division commanding general on matters pertaining to war, the
10:00AM	24		law of war, his obligations under the international law, the
10:00AM	25		Geneva Convention. I was also -- and in that capacity, when
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10:00AM	1		9/11 occurred, the division stood up to go into New York City
10:00AM	2		and defend the city and also help with disaster relief, so I was
10:00AM	3		part of the planning for that operation. The division
10:00AM	4		ultimately did not deploy to New York City. The civilian
10:00AM	5		authorities were able to handle that, but I was part of that
10:00AM	6		process.
10:00AM	7		And then thereafter, as operational law attorney, I
10:00AM	8		advised 10th Mountain troops going to Afghanistan on the law of
10:00AM	9		war, rules of engagement, targeting. The 10th Mountain Division
10:00AM	10		was the first U.S. troops on the ground for Operation and During
10:01AM	11		Freedom in Afghanistan in 2001. I had a secondary duty at Fort
10:01AM	12		Drum as an operational law attorney, which was as a military
10:01AM	13		magistrate.
10:01AM	14	Q.	Like a judge?
10:01AM	15	A.	Yes, a magistrate to the military judge stationed at Fort
10:01AM	16		Drum.
10:01AM	17	Q.	Okay.
10:01AM	18	A.	And I heard bail cases and search authorization cases for
10:01AM	19		the government. In 2003 I asked my -- I volunteered. I asked
10:01AM	20		my commander if I could leave 10th Mountain Division, and at
10:01AM	21		that time the government was indicating that the U.S. might
10:01AM	22		possibly invade Iraq because of WMD concerns.
10:01AM	23	Q.	Alleged concerns?
10:01AM	24	A.	Which were proven eventually.
10:01AM	25	Q.	Which were disproven or proven?
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10:01AM **1 A. Which were proven.**

10:01AM **2** THE COURT: I don't want to fight that war today.

10:01AM **3** MR. FELDMAN: Continue.

10:01AM **4** THE WITNESS: But it wasn't clear which units would be

10:02AM **5** deploying initially. 10th Mountain Division was not one of the

10:02AM **6** units that was sort of tagged to go first, so I volunteered to go

10:02AM **7** with the unit that was, which was third Army, which was the

10:02AM **8** actual headquarters for the entire ground invasion. CenCom was

10:02AM **9** in charge of the entire initial invasion, all components, sea,

10:02AM **10** air, and land, and special forces, but the actual general on the

10:02AM **11** ground commanding the ground invasion forces, both British and

10:02AM **12** American, marine and Army was --

10:02AM **13 Q.** And who was it that you were --

10:02AM **14 A. Lieutenant General David McKiernan, lieutenant general,**

10:02AM **15 three stars.**

10:02AM **16 Q.** What did you do for the general?

10:02AM **17 A. I was one of four operational law attorneys. I deployed**

10:02AM **18 over to Kuwait and then eventually Iraq with the invasion**

10:02AM **19 forces. I advised the general on law of war issues, rules of**

10:02AM **20 engagements, how to treat enemy prisoners of war, targeting**

10:02AM **21 issues, sort of critical issues for the prosecution of the war.**

10:03AM **22 I was also part of the planning cell that planned the actual**

10:03AM **23 invasion, the actual sort of infantry planners, which troops**

10:03AM **24 would go where, et cetera, which objectives to take, which**

10:03AM **25 routes to take. I was part of that planning cell.**

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10:03AM **1 And then also as -- prior to the invasion kickoff and**

10:03AM **2 right at the beginning of the invasion, I was part of the**

10:03AM **3 planning for the standing up of the new Iraqi government.**

10:03AM **4 Q.** Like rebuilding the government kind of thing?

10:03AM **5 A. Exactly.**

10:03AM **6 Q.** So what did you do as a lawyer to help rebuild the

10:03AM **7 government?**

10:03AM **8 A. One of the things I did was in Baghdad I was part of a**

10:03AM **9 small team that drove around every court in the Baghdad area --**

10:03AM **10 that was numerous courts -- and helped -- this was once we had**

10:03AM **11 secured Baghdad, the government had fallen, and things were**

10:03AM **12 relatively stable. We -- our job was to restart Iraqi court**

10:04AM **13 system. And at some point we were given an additional tasking**

10:04AM **14 in that mission, which was to protect U.S. federal judges who**

10:04AM **15 had come over --**

10:04AM **16 Q.** To advise?

10:04AM **17 A. -- to advise in that process.**

10:04AM **18 Q.** Can you recall any of the names of those federal judges?

10:04AM **19** MS. GEORGE: Objection, relevance, Your Honor.

10:04AM **20** THE WITNESS: I don't recall.

10:04AM **21** MR. FELDMAN: You don't recall? He doesn't recall.

10:04AM **22** Thank you. Okay. Continue.

10:04AM **23** THE COURT: I do, but he doesn't.

10:04AM **24** BY MR. FELDMAN:

10:04AM **25 Q.** Anyway, we don't know anything about that. Next.

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10:04AM **1 A. At that point, it was just -- reconstruction was**

10:04AM **2 occurring, was taking place. Eventually, in September of 2004,**

10:04AM **3 I redeployed stateside and I was still within the same command**

10:04AM **4 but the stateside unit. I had completed my sort of deployment**

10:04AM **5 tour.**

10:04AM **6 Q.** Did there come a time when you became a victim of a

10:04AM **7** certain policy?

10:04AM **8** MS. GEORGE: Objection, Your Honor, relevance.

10:04AM **9** THE COURT: Overruled.

10:05AM **10** THE WITNESS: My three-year Jag tour ended in February of

10:05AM **11** 2004 and I did get out of the Army, went back to civilian --

10:05AM **12** THE COURT: Please explain. When you say you got out of

10:05AM **13** the Army, do you mean you went into reserve status or you -- did

10:05AM **14** you keep your commission as captain?

10:05AM **15** THE WITNESS: No, Your Honor. Unless you ask to be

10:05AM **16** retained for another three years --

10:05AM **17** THE COURT: You're out, your enlistment was over?

10:05AM **18** THE WITNESS: My commission ended.

10:05AM **19** THE COURT: Ended.

10:05AM **20** THE WITNESS: I was honorably discharged, completion of

10:05AM **21** tour, and I went back to Vermont.

10:05AM **22** BY MR. FELDMAN:

10:05AM **23 Q.** Let me back up. Will you please explain in some detail

10:05AM **24** how you were out processed?

10:05AM **25 A. So I went back to Vermont. I was a civilian. I intended**

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10:05AM **1 to practice law there. And in March of 2004, the coalition was**

10:05AM **2 experiencing its lowest point of the war for the entire war**

10:06AM **3 since -- since forever. I think they were suffering the highest**

10:06AM **4 coalition casualties. And even though I was a civilian and had**

10:06AM **5 decided to go back to civilian practice, I realized at that**

10:06AM **6 moment there was a need for -- because the -- the high casualty**

10:06AM **7 loss was deterring people from enlisting, and people were sort**

10:06AM **8 of going AWOL so they didn't have to go to Iraq, so I decided**

10:06AM **9 that I would volunteer for another tour and share my expertise,**

10:06AM **10 which I had saved lives during my time in Iraq right up to that**

10:06AM **11 point, so I volunteered to go to Iraq. I took a specific Iraq**

10:06AM **12 bound billet with the 42nd Infantry Division as a Jag officer.**

10:06AM **13 That division had no Jags with actual combat experience, so I**

10:06AM **14 was --**

10:06AM **15 Q.** Other than you?

10:06AM **16 A. Right. So I volunteered and I mobilized to Fort Drum in**

10:07AM **17 May of 2004 for one or two months of training and then to go to**

10:07AM **18 Iraq. It was -- once I got to Fort Drum, I made the decision to**

10:07AM **19 inform my commander that I was gay because I was involved with**

10:07AM **20 someone and I had this feeling like the third time might be -- I**

10:07AM **21 might be killed, you know, this time. You can only be so lucky**

10:07AM **22 for so long and I wasn't going to skulk about the barracks**

10:07AM **23 pretending like I was talking to my cousin on the phone, I was**

10:07AM **24 talking to this individual. So I informed my commander that I**

10:07AM **25 was gay but said I wanted to stay on the mission and go to Iraq.**

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10:07AM **1** They immediately began discharge proceedings under Don't Ask,
 10:07AM **2** Don't Tell. However, because of my expertise, they retained me
 10:07AM **3** for four months so that I could train the rest of the division's
 10:07AM **4** lawyers on critical Jag matters. And then on the very day that
 10:08AM **5** the division completed its training and was certified for
 10:08AM **6** deployment, they told me my discharge had been approved,
 10:08AM **7** honorable discharge under Don't Ask, Don't Tell, and I think two
 10:08AM **8** days later I was sent home.
 10:08AM **9** Q. Please continue. Let me fast forward. Did you practice
 10:08AM **10** law between 2004 and 2009?
 10:08AM **11** A. Sporadically I did as a solo practitioner in Vermont. I
 10:08AM **12** was admitted to that bar in 2005.
 10:08AM **13** Q. You were admitted to the Vermont bar?
 10:08AM **14** A. Yes.
 10:08AM **15** Q. So you think that's a big nothing? Withdrawn. Okay. So
 10:08AM **16** let's fast forward. In 2009, did there come a time when you met
 10:08AM **17** the defendant, Lieutenant Dan Choi?
 10:08AM **18** A. Yes.
 10:08AM **19** Q. And please explain how you met him.
 10:08AM **20** A. I had e-mailed Dan after hearing about his story, and we
 10:08AM **21** talked about --
 10:08AM **22** Q. Where did you hear about his story, by the way?
 10:08AM **23** MS. GEORGE: Objection.
 10:08AM **24** THE WITNESS: I had seen it on --
 10:08AM **25** THE COURT: Overruled.

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10:09AM **1** THE WITNESS: I had seen it on television.
 10:09AM **2** BY MR. FELDMAN:
 10:09AM **3** Q. What television station?
 10:09AM **4** A. I think it was MSNBC and also on the Web. By that time I
 10:09AM **5** was fully -- I was committed to activism for equality for gay
 10:09AM **6** people, and so I regularly viewed Internet sites devoted to gay
 10:09AM **7** equality and gay --
 10:09AM **8** Q. Did you ever see the lieutenant on CNN?
 10:09AM **9** A. Yes.
 10:09AM **10** Q. Did you ever see -- if you didn't see it live, did you
 10:09AM **11** see copies vis-à-vis on the Rachel Maddow Show, the national or
 10:09AM **12** international MSNBC show?
 10:09AM **13** A. Yes.
 10:09AM **14** Q. Did you see the lieutenant on other international media?
 10:09AM **15** A. Yes. I extensively researched him.
 10:09AM **16** Q. Okay. And then you e-mailed him. Please continue.
 10:09AM **17** A. Yes. It was my opinion at that time that we needed to
 10:09AM **18** engage in activism to pressure the government, specifically
 10:09AM **19** President Obama, to take steps to end the discrimination
 10:10AM **20** immediately and repeal Don't Ask, Don't Tell, and it was my
 10:10AM **21** feeling that we needed to go directly to the White House and
 10:10AM **22** engage in free speech to communicate that message that the
 10:10AM **23** discrimination had to be ended and we deserved full equality,
 10:10AM **24** and so I --
 10:10AM **25** Q. And you did?

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10:10AM **1** A. Yes.
 10:10AM **2** Q. Okay. By the way, have you ever -- you're friends with
 10:10AM **3** Dan, right?
 10:10AM **4** A. We are friends.
 10:10AM **5** Q. Have you ever been to his house?
 10:10AM **6** A. No.
 10:10AM **7** Q. Has he ever been to your house?
 10:10AM **8** A. No.
 10:10AM **9** Q. Has he ever met your family?
 10:10AM **10** A. No.
 10:10AM **11** Q. Have you ever met his family?
 10:10AM **12** A. No.
 10:10AM **13** Q. Have you ever dated?
 10:10AM **14** A. No.
 10:10AM **15** Q. Okay. Continue.
 10:10AM **16** A. So I contacted Dan and he e-mailed me back, and then
 10:10AM **17** nothing really happened with that, and then at one later -- in
 10:10AM **18** 2010, approximately March of 2010, Dan called me.
 10:10AM **19** Q. Okay.
 10:10AM **20** A. And he invited me to come to Washington to go with him to
 10:11AM **21** the White House and engage in free speech as I had envisioned
 10:11AM **22** and as he was now intending to do.
 10:11AM **23** BY MR. FELDMAN:
 10:11AM **24** Q. Okay. And did there come a time -- let me fast forward a
 10:11AM **25** little bit to, let's say, the last two weeks of February '10 or

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10:11AM **1** the first two weeks of April '10?
 10:11AM **2** A. March or --
 10:11AM **3** Q. I'm sorry, I'm sorry. I'm saying March. I'm sorry,
 10:11AM **4** Judge. March. Let's talk about the few weeks before -- I'm
 10:11AM **5** sorry -- before the March 10th [sic] arrest which His Honor has
 10:11AM **6** the -- was just admitted into evidence, Judge, the aftermath of
 10:11AM **7** that that you're going to view at your leisure, if you have any.
 10:11AM **8** Let's talk about that. Were there any preoperational meetings
 10:11AM **9** for that operation, the deployment of that operation?
 10:11AM **10** MS. GEORGE: Objection. Relevance, Your Honor, to the
 10:11AM **11** charge at hand.
 10:11AM **12** MR. FELDMAN: The people opened the door by admitting the
 10:11AM **13** March 10th interview -- or the March 18th interview.
 10:11AM **14** THE COURT: Overruled. Let me hear.
 10:11AM **15** BY MR. FELDMAN:
 10:11AM **16** Q. Please explain in some detail the preoperational meetings
 10:11AM **17** for the March 18th activism deployment.
 10:12AM **18** A. Dan and I and several other activists met at an
 10:12AM **19** individual couple's house and discussed going to the White
 10:12AM **20** House, the specifics of going to the White House and engaging in
 10:12AM **21** free speech.
 10:12AM **22** Q. Okay. Now, I know this was not the Army operation, but
 10:12AM **23** just in general terms, could you state -- I know this is a bad
 10:12AM **24** word, but use your own words, who was the commanding officer?
 10:12AM **25** That's a really bad word. Who was the leader?

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		21	
10:12AM	1	A.	Dan was leading this action.
10:12AM	2	Q.	And what was your role? What did you do? What did you
10:12AM	3		do?
10:12AM	4	A.	I was there to engage in the free speech with him, and my
10:12AM	5		personal -- I wanted to -- I had a personal requirement that it
10:12AM	6		be totally nonviolent. I wouldn't be -- I've been a law and
10:12AM	7		order person all my life, and I would not be part of anything
10:13AM	8		involving violence.
10:13AM	9	Q.	Did you take any legal steps, in effect, to assure that
10:13AM	10		the individual freedom fighters in this deployment for freedom
10:13AM	11		bound themselves to your standards?
10:13AM	12	A.	Well, personally I did research on anything that -- any
10:13AM	13		law that I thought might touch the situation to make sure we
10:13AM	14		stayed within the lawful content.
10:13AM	15	Q.	Did you require any documentation from the people?
10:13AM	16	A.	We specifically created a written pledge of nonviolence
10:13AM	17		that every person involved in the action signed, whether they
10:13AM	18		were speaking or not, and we also individually verbally made
10:13AM	19		sure that everyone understood that this was total nonviolence.
10:13AM	20	Q.	Okay. All right. And then -- if you want -- the
10:13AM	21		demonstration happened, its public record, March 10th. I'm not
10:14AM	22		going to go into that. I guess Ms. George, if she wishes, or if
10:14AM	23		the Court wants to --
10:14AM	24		MS. GEORGE: Objection --
10:14AM	25		MR. FELDMAN: -- there's a lot of --
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		22	
10:14AM	1		MS. GEORGE: Objection, Your Honor. It assumes facts not
10:14AM	2		in evidence. There's nothing in evidence about March 10th.
10:14AM	3		MR. FELDMAN: I'm sorry, March 18th.
10:14AM	4		I apologize, Judge.
10:14AM	5		THE COURT: That's also the same day that the summons was
10:14AM	6		issued, so we were here on March 18th as well?
10:14AM	7		MS. GEORGE: No. March 18th is in reference to the
10:14AM	8		statement I made --
10:14AM	9		THE COURT: I'm well aware of it, but the summons says,
10:14AM	10		"Summons in a criminal case. Date in time: March 18th, 2011 at
10:14AM	11		9:30 a.m."
10:14AM	12		MS. GEORGE: In reference to what, Your Honor?
10:14AM	13		THE COURT: This case.
10:14AM	14		MS. GEORGE: That's a summons to be here on March 18th.
10:14AM	15		THE COURT: Okay, but simultaneously with that, I am led
10:14AM	16		to understand that on March 18th, 2010, something occurred at
10:14AM	17		Superior Court after which Lieutenant Kim --
10:14AM	18		MR. FELDMAN: Lieutenant -- no offense taken, Your Honor.
10:14AM	19		THE COURT: That the Lieutenant spoke about that, right?
10:15AM	20		MS. GEORGE: No.
10:15AM	21		THE COURT: It was just a coincidence that it happen to be
10:15AM	22		the same day as the summons?
10:15AM	23		MS. GEORGE: It's not the same day. It was two separate
10:15AM	24		years.
10:15AM	25		THE COURT: Oh, I see. March 18th, 2010.
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		23	
10:15AM	1		MR. FELDMAN: Excuse me. My fault for not making it
10:15AM	2		clearer, Judge, I'm sorry. Okay.
10:15AM	3		BY MR. FELDMAN:
10:15AM	4	Q.	You did do the March 18th deployment. Okay. You want to
10:15AM	5		go into a little detail -- no, forget it. Let's talk about
10:15AM	6		April --
10:15AM	7	A.	-- 18th, 2010.
10:15AM	8	Q.	There was a similar deployment?
10:15AM	9	A.	Exactly.
10:15AM	10	Q.	And was Dan involved in that?
10:15AM	11	A.	Yes.
10:15AM	12	Q.	And were you involved in that?
10:15AM	13	A.	Yes.
10:15AM	14	Q.	Were you also the <i>de jurat</i> legal advisor, if I may use
10:15AM	15		that word? Would you characterize yourself as that or no?
10:15AM	16	A.	Well, I wouldn't say I gave advice. I gave information.
10:15AM	17	Q.	I know you're not admitted to practice law here, but did
10:15AM	18		you use your expertise? Please. Come on.
10:15AM	19	A.	I did everything possible to make sure that the other
10:15AM	20		individuals who were going to the White House with us the second
10:15AM	21		time to engage in free speech were fully prepared with
10:15AM	22		information to stay within the law, to be nonviolent, and to
10:16AM	23		know what was coming. We had experienced harassment from the
10:16AM	24		police when Dan and I were in jail, and we wanted to make sure
10:16AM	25		that they understood that the nonviolence --
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		24	
10:16AM	1	Q.	Could I interrupt you for one second? I'm sorry. I'm
10:16AM	2		sorry.
10:16AM	3		MR. FELDMAN: I'm sorry, I'm sorry. I usually talk loud.
10:16AM	4		I'm sorry, I'm sorry.
10:16AM	5		THE COURT: It's not so much that. Remember, he is
10:16AM	6		recording as well as typing.
10:16AM	7		MR. FELDMAN: I didn't know that. I'm sorry.
10:16AM	8		THE COURT: Don't worry about it.
10:16AM	9		THE WITNESS: We just made sure that they understood that
10:16AM	10		the nonviolence pledge and responsibility continued in the jail,
10:16AM	11		that if they were harassed like Dan and I were, if something
10:16AM	12		happened, that they were just to simply remain nonviolent and
10:16AM	13		raise the issue once they got out of jail.
10:16AM	14		BY MR. FELDMAN:
10:16AM	15	Q.	All right. Let's fast forward to on or about the last
10:16AM	16		two weeks of October of '11. Did there come a time when you
10:17AM	17		guys decided to do something similar?
10:17AM	18	A.	If I could -- I just remembered a second additional thing
10:17AM	19		to my previous answer.
10:17AM	20	Q.	Please, please, please.
10:17AM	21	A.	One thing we -- we even -- in terms of nonviolence, we
10:17AM	22		even went so far as to tell the people going with us that they
10:17AM	23		needed to discipline themselves to disengage from even their
10:17AM	24		instinctive reflex, physical reflexes. I specifically told
10:17AM	25		people that there may come a time when you're engaging in free
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	25	
10:17AM	1	speech in front of the White House when a police officer or law
10:17AM	2	enforcement person may touch you, and a person's normal reaction
10:17AM	3	to being touched by someone else is to instinctively reflexively
10:17AM	4	sort of break free or move or something like that, and we
10:17AM	5	drilled in people that they needed to disengage that reflex,
10:17AM	6	that they were to totally not resist.
10:17AM	7	Q. You actually saw in person Lieutenant Dan Choi's
10:17AM	8	disengagement from that reflex on November 15th, 2010, did you
10:18AM	9	not?
10:18AM	10	A. Yes.
10:18AM	11	Q. Did you also see videos of his disengagement from that
10:18AM	12	instinctual reflex on November 15th, 2010?
10:18AM	13	A. Yes.
10:18AM	14	Q. Did he, in fact, comply with your advice?
10:18AM	15	A. Yes.
10:18AM	16	Q. To the max?
10:18AM	17	A. My requirement for participation and everyone else's
10:18AM	18	requirement for participation in the speaking --
10:18AM	19	Q. And he so complied?
10:18AM	20	A. Yes.
10:18AM	21	Q. Okay. Let's go back to a couple of weeks before November
10:18AM	22	15th. Please explain in whatever detail you think is
10:18AM	23	appropriate, Captain, about the preparation for the November
10:18AM	24	15th deployment of the freedom fighters -- of the gay freedom
10:18AM	25	fighters?
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10:18AM	1	A. Well, we did the same thing again in preparation for the
10:18AM	2	second speaking action, which was to get the folks together and
10:18AM	3	have them sign the nonviolence pledge, discuss nonviolence with
10:18AM	4	them verbally, prepare them for what they might encounter,
10:19AM	5	just --
10:19AM	6	Q. All right. And did there come a time -- and let's go
10:19AM	7	fairly slow here. Let's talk for -- as you were arriving from
10:19AM	8	the -- they call it subway here?
10:19AM	9	A. Metro.
10:19AM	10	Q. I'm sorry, the Metro. Go real slow and start from there
10:19AM	11	in your own words. Talk about that day, that fated day that
10:19AM	12	formed the instant criminal complaint against my client.
10:19AM	13	A. We didn't all go as one group to the White House, we
10:19AM	14	broke up into groups, and my group headed to the White House via
10:19AM	15	the Metro. And I don't recall which stop it was, but it was one
10:19AM	16	of the distant stops from the White House. We must have been
10:19AM	17	six, six to ten blocks away from the White House. It was a very
10:19AM	18	long walk. And we came out -- we came up the escalator out of
10:19AM	19	the Metro, and we couldn't have gotten maybe a block when I
10:19AM	20	noticed a woman standing -- a white woman, I'd say in her 30s,
10:20AM	21	she was standing maybe 50 feet from us, and she was looking
10:20AM	22	at -- she was in a suit, plain clothed suit. She was looking at
10:20AM	23	me very strangely. And as we kept walking, the people and I,
10:20AM	24	the people with me and I, we got within hearing range and she
10:20AM	25	spoke into her cuff and said there's a bunch of them coming to
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10:20AM	1	the White House.
10:20AM	2	Q. Let me interrupt you. Was that after 10:50 a.m. on
10:20AM	3	November 15th after Randy Myers, Esquire, the assistant
10:20AM	4	solicitor general, gave his legal opinion letter to Detective
10:20AM	5	Sergeant Hodge?
10:20AM	6	A. Yes.
10:20AM	7	Q. Okay. Thank you. Then what happened?
10:20AM	8	A. I just wanted to say that the woman seemed to recognize
10:20AM	9	me, at least.
10:20AM	10	Q. It appeared that she recognized you, in your opinion?
10:21AM	11	A. Yes. She definitely -- She was looking at the group
10:21AM	12	specifically, and then she spoke into her cuff and said,
10:21AM	13	"there's a bunch of them on their way to the White House."
10:21AM	14	THE COURT: At this point, Captain, you are wearing not
10:21AM	15	what you're wearing today; you're in uniform?
10:21AM	16	THE WITNESS: Yes, Your Honor.
10:21AM	17	THE COURT: Tell me exactly what you're wearing.
10:21AM	18	THE WITNESS: I was wearing my beret, my black beret with
10:21AM	19	my captain's bars and -- nonsubdued, so they were shiny.
10:21AM	20	THE COURT: And you were in the traditional uniform, what
10:21AM	21	I long a time ago called fatigues?
10:21AM	22	THE WITNESS: Yes, Your Honor. They were called BDUs --
10:21AM	23	when I was -- at that time they were called ACUs, Army combat
10:21AM	24	uniforms, which is the sort of digital camouflage, both jacket
10:21AM	25	and pants, and I was wearing combat -- desert combat boots, Your
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10:21AM	1	Honor.
10:21AM	2	THE COURT: And was everyone with you dressed in a similar
10:21AM	3	fashion? The defendant was, I assume.
10:21AM	4	THE WITNESS: I wasn't with the defendant, Your Honor.
10:21AM	5	THE COURT: Okay.
10:21AM	6	THE WITNESS: I was with -- I believe the -- the people
10:22AM	7	with me were civilians.
10:22AM	8	THE COURT: Excuse me for interrupting.
10:22AM	9	MR. FELDMAN: Excuse me for interrupting. Are you
10:22AM	10	finished, Judge?
10:22AM	11	THE COURT: Yeah, I'm finished.
10:22AM	12	MR. FELDMAN: I'm sorry, Judge. Okay. Please, I
10:22AM	13	welcome -- this is not a jury trial, Judge. I'm grateful. Okay.
10:22AM	14	BY MR. FELDMAN:
10:22AM	15	Q. Was there anybody in clerical garb?
10:22AM	16	A. Well, with my group, particular group at that moment, no.
10:22AM	17	Part of the group of speakers who organized at the beginning and
10:22AM	18	then ended up at the White House was Father Geoff Farrow, who
10:22AM	19	was in clerical garb, was in priest black clothing and collar.
10:22AM	20	BY MR. FELDMAN:
10:22AM	21	Q. By the way, can I ask, what were you born? And I ask
10:22AM	22	very briefly, very briefly. Any religious background?
10:22AM	23	MS. GEORGE: Objection, Your Honor.
10:22AM	24	THE COURT: That's all right. There was a clerical
10:22AM	25	person. Let's get it out.
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10:22AM **1** THE WITNESS: I was raised Catholic.

10:22AM **2** BY MR. FELDMAN:

10:22AM **3** **Q.** And did you go to any religious instruction?

10:22AM **4** **A.** I'm sorry?

10:22AM **5** **Q.** Any religious schools?

10:22AM **6** **A.** I went to Jesuit High School.

10:22AM **7** **Q.** Jesuit? Okay.

10:23AM **8** **A.** And St. Ignatius.

10:23AM **9** THE COURT: I'm sorry?

10:23AM **10** THE WITNESS: St. Ignatius in Cleveland, Ohio, Your Honor.

10:23AM **11** MR. FELDMAN: Okay.

10:23AM **12** THE WITNESS: The winningest [sic] football team in high

10:23AM **13** school.

10:23AM **14** BY MR. FELDMAN:

10:23AM **15** **Q.** Okay. You get off the subway, the agent talks into her

10:23AM **16** cuff. Then what happens next?

10:23AM **17** **A.** The woman stayed with us for a while ahead of us and we

10:23AM **18** continued on, the group continued on to the White House. We

10:23AM **19** approached from the Treasury Department side along Pennsylvania

10:23AM **20** Avenue, and at that point we proceeded towards the White House

10:23AM **21** fence.

10:23AM **22** **Q.** Okay.

10:23AM **23** **A.** Where we joined the other individuals participating in

10:23AM **24** the speaking.

10:23AM **25** **Q.** Okay. Where -- can I have Government's Exhibit 1,

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10:23AM **1** please?

10:23AM **2** THE COURT: Sure.

10:24AM **3** MR. FELDMAN: Can I put it up on the thing, Judge?

10:24AM **4** THE COURT: Of course you can.

10:24AM **5** MR. FELDMAN: May I approach?

10:24AM **6** THE COURT: Certainly.

10:24AM **7** MR. FELDMAN: Thank you. Can the witness step down?

10:24AM **8** THE COURT: Yes.

10:24AM **9** BY MR. FELDMAN:

10:24AM **10** **Q.** Taking the lavender highlighter, please show the Court

10:24AM **11** where you were.

10:24AM **12** MS. GEORGE: Your Honor, may I approach so I can see?

10:24AM **13** THE COURT: Of course.

10:24AM **14** BY MR. FELDMAN:

10:24AM **15** **Q.** Please make a lavender CP for Captain Pietrangelo where

10:24AM **16** you were stationed during the deployment.

10:24AM **17** MS. GEORGE: Your Honor, at this point in time the

10:24AM **18** government is going to object to him as being a captain. He's no

10:24AM **19** longer in the military.

10:24AM **20** THE COURT: That's all right.

10:24AM **21** BY MR. FELDMAN:

10:24AM **22** **Q.** Continue. Do you need glasses, captain? No, I have

10:24AM **23** them, but I need bifocals so -- well, I ended up at a certain

10:25AM **24** point. After the park police cordoned off Pennsylvania Avenue,

10:25AM **25** I ended up -- you want me to put "CP"?

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10:25AM **1** MS. GEORGE: Objection, Your Honor, at this point in time.

10:25AM **2** Could the defense counsel lay a foundation that the witness can

10:25AM **3** see the exhibit and tell what's on the exhibit?

10:25AM **4** MR. FELDMAN: If you have a problem seeing --

10:25AM **5** THE COURT: Do you want a magnifying glass?

10:25AM **6** THE WITNESS: No, Your Honor. It's just a question of --

10:25AM **7** MR. FELDMAN: Magnifying glass would help. Do you have

10:25AM **8** magnifying glasses? Does anybody have any magnifying glasses?

10:25AM **9** THE COURTROOM CLERK: Judge, let me call.

10:25AM **10** THE COURT: See if Sarah has one.

10:25AM **11** MR. FELDMAN: Thank you, sir.

10:25AM **12** THE COURT: These are reading glasses plus 2, plus 2.

10:25AM **13** Would they help?

10:25AM **14** THE WITNESS: Thank you, Your Honor. That's very gracious

10:25AM **15** of you.

10:25AM **16** It's a little bit fuzzier. Sorry, Your Honor.

10:26AM **17** MR. FELDMAN: Does that help you, sir? Does the judge's

10:26AM **18** glasses help you?

10:26AM **19** THE COURT: No, it made it worse.

10:26AM **20** THE WITNESS: I'm okay. It's just a question of getting

10:26AM **21** the right angle.

10:26AM **22** MR. FELDMAN: Take your time.

10:26AM **23** MS. GEORGE: Your Honor, could the record reflect that the

10:26AM **24** witness can't actually tell what's on the exhibit and --

10:26AM **25** MR. FELDMAN: Can the record reflect that the defendant

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10:26AM **1** can conduct his own cross-examination -- I'm sorry, direct

10:26AM **2** examination.

10:26AM **3** THE COURT: Captain, can you see that object?

10:26AM **4** THE WITNESS: Yes, Your Honor. This is an aerial diagram

10:26AM **5** of the White House area and its labeled "White House Area." Your

10:26AM **6** Honor, I just want to clarify. My vision is fairly good. It's

10:26AM **7** just I don't have bifocals, so to look at or read things, I need

10:26AM **8** to get closer.

10:26AM **9** THE COURT: All right. Take your time.

10:26AM **10** THE WITNESS: It's White House area titled White House

10:26AM **11** Area marked Government's Exhibit Number 1. I can clearly see the

10:26AM **12** entire diagram and things written on it. It's just a question of

10:26AM **13** getting at an angle.

10:26AM **14** BY MR. FELDMAN:

10:27AM **15** **Q.** Do you want to get closer? Do you want me to put it down

10:27AM **16** here maybe?

10:27AM **17** THE WITNESS: No, I'm okay, Mr. Feldman. I'm okay.

10:27AM **18** Once -- my group, I and my group approached along Pennsylvania

10:27AM **19** Avenue.

10:27AM **20** BY MR. FELDMAN:

10:27AM **21** **Q.** Make a line with the lavender, you and your group.

10:27AM **22** **A.** (Indicating).

10:27AM **23** THE COURT: So you're traveling west on Pennsylvania?

10:27AM **24** THE WITNESS: Yes, Your Honor. I stopped at approximately

10:27AM **25** this point, (indicating).

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10:27AM **1** BY MR. FELDMAN:

10:27AM **2** **Q.** About parallel with the center line almost? Almost

10:27AM **3** parallel with the center line, maybe a few yards east of the

10:27AM **4** center line from the White House?

10:27AM **5** **A.** **I stopped approximately in the center of the White House**

10:27AM **6** **fence, a little bit east of that.**

10:28AM **7** THE COURT: Put an X there with your initials.

10:28AM **8** MR. FELDMAN: With your initials.

10:28AM **9** THE COURT: Okay. So that's where you're stopped.

10:28AM **10** MR. FELDMAN: Can you make it a little bigger? I can't --

10:28AM **11** a little bigger. Why don't you make it equally big with the

10:28AM **12** government's words, with the Court's permission.

10:28AM **13** THE WITNESS: This is initially when I arrived. And once

10:28AM **14** the speaking began and the park police cordoned off Pennsylvania

10:28AM **15** Avenue, they pushed me and the rest of the crowd back across the

10:28AM **16** street and would not allow us to stay on Pennsylvania Avenue but

10:28AM **17** required us to go to the sidewalk in Lafayette Park, so

10:28AM **18** eventually I ended up there. (Indicating), approximately here.

10:28AM **19** THE COURT: Okay. I see.

10:28AM **20** THE WITNESS: I was basically near the curb, Your Honor.

10:29AM **21** THE COURT: Thank you.

10:29AM **22** BY MR. FELDMAN:

10:29AM **23** **Q.** Okay. Please continue. In any way you can, please, in

10:29AM **24** your own words, explain how this political demonstration --

10:29AM **25** well, let me -- do you want to have a seat or do you want to

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10:29AM **1** make --

10:29AM **2** THE COURT: I can sit down.

10:29AM **3** BY MR. FELDMAN:

10:29AM **4** **Q.** Let me go into a little bit more detail about your

10:29AM **5** intent, okay. Tell the Court what the intent was, to use a

10:29AM **6** dirty word, "*mens rea*" of this whole demonstration.

10:29AM **7** **A.** **The intent was to speak out against Don't Ask, Don't Tell**

10:29AM **8** **and discrimination against gay people in general and to demand**

10:29AM **9** **equality.**

10:29AM **10** **Q.** Now, just very -- give the names of the gay freedom

10:29AM **11** fighters that were deployed that day?

10:29AM **12** **A.** **Well, the ones doing the actual speaking who were**

10:30AM **13** **arrested were Dan Photou, Miriam Ben-Shalom, Michael --**

10:30AM **14** **Q.** For the record, are you refreshing your recollection from

10:30AM **15** anything?

10:30AM **16** **A.** **Just from my memory.**

10:30AM **17** **Q.** I saw you looking down.

10:30AM **18** **A.** **I was just counting.**

10:30AM **19** **Q.** I'm sorry, I'm sorry.

10:30AM **20** **A.** **To make sure. There were 13, so I wanted to make sure.**

10:30AM **21** **Dan Photou, Miriam Ben-Shalom, Michael Bedwell, Father Geoff**

10:30AM **22** **Farrow, Rob Smith, Dan Choi, Mara Boyd, Justin Elzie, Scott**

10:30AM **23** **Woolledge, Evelyn Thomas.**

10:30AM **24** THE COURT: It's not a memory contest.

10:30AM **25** THE WITNESS: Robin McGehee.

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10:30AM **1** BY MR. FELDMAN:

10:30AM **2** **Q.** It's not a memory contest. That's okay.

10:30AM **3** THE COURT: Ian Finkembinder.

10:31AM **4** MR. FELDMAN: Oh, it is a memory contest.

10:31AM **5** THE COURT: And Daniel Foutou.

10:31AM **6** THE WITNESS: Foutou, yes, Your Honor.

10:31AM **7** THE COURT: I think that's 13.

10:31AM **8** MR. FELDMAN: Okay. Thank you.

10:31AM **9** BY MR. FELDMAN:

10:31AM **10** **Q.** Now, did there come a time when you were giving orders --

10:31AM **11** that's a bad word. Did there come a time when you were speaking

10:31AM **12** through a bullhorn?

10:31AM **13** **A.** **Yes.**

10:31AM **14** **Q.** And more or less, what were you saying?

10:31AM **15** **A.** **I was engaging in chants, equality chants.**

10:31AM **16** **Q.** Were those --

10:31AM **17** **A.** **I was also speaking to President Obama directly regarding**

10:31AM **18** **equality. I was also narrating what was happening to the people**

10:31AM **19** **as they were -- the speakers as they were being arrested.**

10:31AM **20** **Q.** Right. I'm sorry to interrupt you. You said you were

10:31AM **21** addressing President Obama. Had you ever received an invitation

10:31AM **22** to address President Obama regarding this issue?

10:32AM **23** **A.** **No. You mean like a written invitation?**

10:32AM **24** **Q.** Not a gilded invitation. Were you construed as a -- --

10:32AM **25** **A.** **During -- President Obama gave a speech in 2009 during**

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10:32AM **1** **the Human Rights Campaign dinner in which --**

10:32AM **2** **Q.** -- this is a gay thing, right?

10:32AM **3** **A.** **Which is a gay rights organization, a well-known gay**

10:32AM **4** **rights organization, gay rights lobbying organization.**

10:32AM **5** **Q.** Let me slow down. You want to say like -- Can we fairly

10:32AM **6** say that's where the big gay money comes from?

10:32AM **7** MS. GEORGE: Objection, Your Honor. Outside the conduct

10:32AM **8** of November 15th and the scope of that offense.

10:32AM **9** THE COURT: That's remarkable. I take it -- in Washington

10:32AM **10** parlance, that is where one would anticipate finding those people

10:32AM **11** who contribute greatly to gay causes, to the cause of human

10:32AM **12** rights with reference to homosexual people.

10:33AM **13** THE WITNESS: Yes, Your Honor.

10:33AM **14** THE COURT: See how we talk in Washington. You have to

10:33AM **15** use all the right language.

10:33AM **16** MR. FELDMAN: I'm learning, sir. We New Yorkers are a

10:33AM **17** little down in the --

10:33AM **18** THE COURT: All right.

10:33AM **19** THE WITNESS: Again, as part of my activism, I was

10:33AM **20** constantly researching and reviewing gay issues and gay news

10:33AM **21** events, so I knew the HRC dinner was -- had occurred, and I read

10:33AM **22** the remarks of the President online.

10:33AM **23** BY MR. FELDMAN:

10:33AM **24** **Q.** Do you have an independent recollection of the exact

10:33AM **25** words of the president?

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10:33AM **1** MS. GEORGE: Objection, Your Honor.

10:33AM **2** MR. FELDMAN: It goes to intent.

10:33AM **3** THE COURT: It goes to intent. Overruled.

10:33AM **4** BY MR. FELDMAN:

10:33AM **5** **Q.** Do you have an independent recollection of the exact

10:33AM **6** words of President Obama inviting us to pressure him? If you

10:33AM **7** don't, is there anything that could refresh your recollection?

10:33AM **8** **A.** **I remember the gist of it which is that he said he wanted**

10:33AM **9** **the gay community to pressure him, pressure leaders, including**

10:33AM **10** **him.**

10:33AM **11** **Q.** Okay. Were you present?

10:33AM **12** **A.** **No.**

10:33AM **13** **Q.** Okay. Was anybody that you know present?

10:33AM **14** MS. GEORGE: Objection. If he wasn't even present, the

10:34AM **15** government is moving to strike it from the record.

10:34AM **16** THE COURT: How are you aware of the statements, sir?

10:34AM **17** THE WITNESS: I believe that the video was online, Your

10:34AM **18** Honor, and also it was reported in writing.

10:34AM **19** THE COURT: So you saw it with your own eyes?

10:34AM **20** THE WITNESS: Yes, Your Honor.

10:34AM **21** MS. GEORGE: Which would be hearsay. Move to strike.

10:34AM **22** THE COURT: It's not being offered for the truth of its

10:34AM **23** content. I really don't care whether --

10:34AM **24** THE COURT: It explains, I think it puts it in context,

10:34AM **25** the notion of intent as to why they went to the White House that

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10:34AM **1** day and bears on the First Amendment questions that I think are

10:34AM **2** inevitably presented by this case. The objection is overruled.

10:34AM **3** MR. FELDMAN: Thank you, Your Honor.

10:34AM **4** THE WITNESS: And Dan Choi spoke with me as well about

10:34AM **5** this and told me he was there and that that was his motivation.

10:34AM **6** BY MR. FELDMAN:

10:34AM **7** **Q.** Okay. So after you were addressing the president of the

10:34AM **8** United States, after you were leading chants, C-H-A-N-T-S, did

10:34AM **9** there come a time when your 13 soldier freedom fighter people

10:34AM **10** were arrested?

10:35AM **11** **A.** **Yes.**

10:35AM **12** **Q.** And you saw the video. Was that a fair and accurate

10:35AM **13** representation of their arrest, or is there any better, fairer,

10:35AM **14** more accurate depiction of their arrest?

10:35AM **15** **A.** **Yes.**

10:35AM **16** **Q.** Okay.

10:35AM **17** MR. FELDMAN: Withdrawn, Judge.

10:35AM **18** THE COURT: All right.

10:35AM **19** MR. FELDMAN: Just for the record, maybe at some point,

10:35AM **20** and this can be confirmed by your staff, we attempted to --

10:35AM **21** there's a URL link to YouTube that we attempted -- and we can

10:35AM **22** provide the Court with that link. I know this Court has some

10:35AM **23** expertise, including to Your Honor's own Website, with these

10:35AM **24** issues, and we also previously provided this URL address to

10:35AM **25** YouTube, what I characterize as a more accurate identification of

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10:36AM **1** the arrests that resulted from this demonstration. You want us

10:36AM **2** to put it on the record now, the link orally?

10:36AM **3** THE COURT: Tell me about the link.

10:36AM **4** MR. FELDMAN: Yes. With your indulgence, Your Honor.

10:36AM **5** THE COURT: That's all right. Why don't you continue your

10:36AM **6** examination and your colleague can give me the URL and we can

10:36AM **7** note it for the record.

10:36AM **8** MR. FELDMAN: And after she gives it to you, I have on

10:36AM **9** consent that Your Honor admits it into evidence. So, at your

10:36AM **10** leisure, can you view it, please?

10:36AM **11** MS. GEORGE: I'm sorry, who has consented?

10:36AM **12** MR. FELDMAN: I have the government's consent, I believe.

10:36AM **13** MS. GEORGE: May I speak at the podium, Your Honor, in

10:36AM **14** reference to that?

10:36AM **15** MR. FELDMAN: Please.

10:36AM **16** MS. GEORGE: The government consented to an exhibit that

10:36AM **17** he was supposed to provide to the Court. The government -- the

10:36AM **18** Court has no exhibit to enter into evidence.

10:36AM **19** THE COURT: Well, what I could do, assuming we have time,

10:36AM **20** I could put it up in everyone's presence and we can all look at

10:36AM **21** it together. It exists, does it not?

10:36AM **22** MS. GEORGE: I believe Mr. Feldman was attempting to do

10:36AM **23** that but they told him he could not.

10:37AM **24** THE COURT: It's copyrighted?

10:37AM **25** THE COURTROOM CLERK: We don't have the Wi-Fi equipment, I

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10:37AM **1** was told.

10:37AM **2** THE COURT: This is a very difficult building to get

10:37AM **3** Wi-Fi.

10:37AM **4** MR. FELDMAN: Was that on the record, what Ms. Coln --

10:37AM **5** THE COURT: Ms. Coln said that there was -- you made an

10:37AM **6** effort, Mr. Feldman, to bring it to the courthouse but there were

10:37AM **7** technical difficulties in doing so because this building, being

10:37AM **8** an old building, has difficulty getting Wi-Fi reception. But as

10:37AM **9** I understand it, what you were going to do, had there not been a

10:37AM **10** technical glitch, was to ask me to look at this depiction, which

10:37AM **11** is on YouTube which I can take judicial notice of, of the fact

10:37AM **12** that it's an Internet-based viewing of usually videos, right?

10:37AM **13** MR. FELDMAN: Thank you so much.

10:37AM **14** MS. GEORGE: And I told Mr. Feldman that I did not object

10:37AM **15** to the authenticity of it because I actually viewed it, but the

10:37AM **16** government does have a concern and objects to the Court reviewing

10:37AM **17** it and the record not reflecting what it is and it being in the

10:37AM **18** record. So, for appeal purposes or whatever, it needs to be part

10:37AM **19** of the record, and it's not at this point in time.

10:37AM **20** THE COURT: All right. We will try to make an effort to

10:38AM **21** do that.

10:38AM **22** MR. FELDMAN: Thank you, Judge, and I apologize.

10:38AM **23** THE COURT: In other words -- let me ask you a question,

10:38AM **24** counsel, which is a question of copyright. Would an effort by us

10:38AM **25** to cause that video to be downloaded to a DVD and made part of

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10:38AM **1** the record, would that be prohibited by YouTube's policies with

10:38AM **2** reference to copyright?

10:38AM **3** MR. FELDMAN: That link was retweeted by many, many people

10:38AM **4** which --

10:38AM **5** THE COURT: I'm sorry, retweeted?

10:38AM **6** MR. FELDMAN: It's a new word. It's actually in the

10:38AM **7** dictionary, Judge, R-E-T-W-E-E-T-E-D.

10:38AM **8** THE COURT: I understand what you mean, but you're saying

10:38AM **9** it is within the YouTube Website where this object can be seen,

10:38AM **10** and your colleague is going to give me the Website. All right.

10:38AM **11** Let me see what we can do about that.

10:38AM **12** MR. FELDMAN: Thank you, sir.

10:38AM **13** MS. GEORGE: Well, could we at least put the Website --

10:38AM **14** THE COURT: She's writing it down for me and I'll read it

10:38AM **15** into the record.

10:38AM **16** MR. FELDMAN: And the Judge told me to continue my

10:39AM **17** interrogation.

10:39AM **18** THE COURT: Just hand it to me, counsel. I'll continue

10:39AM **19** while they do that. Okay.

10:39AM **20** BY MR. FELDMAN:

10:39AM **21** Q. Can you tell the Court the only reason why you are not

10:39AM **22** still in the military?

10:39AM **23** A. **Because I'm gay and Don't Ask, Don't Tell prohibits me**

10:39AM **24** **from being in the military and caused me to be discharged from**

10:39AM **25** **the military.**

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10:39AM **1** Q. But for this tragic legislation that has caused the

10:39AM **2** victimization of 14,000 brave men and women, would you be in the

10:39AM **3** military?

10:40AM **4** A. **Yes. And as soon as the ban officially lifts in**

10:40AM **5** **September, I'm going to apply to rejoin the Army.**

10:40AM **6** Q. God willing. Godspeed. No further questions.

10:40AM **7** THE COURT: I had a question. In the video, when the

10:40AM **8** arrest began to occur, in the ancient tradition of civil

10:40AM **9** disobedience, people go limp. Was that pursuant to your

10:40AM **10** direction?

10:40AM **11** MS. GEORGE: Which video are we referring to?

10:40AM **12** THE COURT: The 27th, the one I saw. In that one I

10:40AM **13** noticed that as the people -- in other words -- Counsel, please

10:40AM **14** listen to me, okay.

10:40AM **15** MR. FELDMAN: I'm sorry. I'm just trying to sit down

10:40AM **16** here.

10:40AM **17** THE COURT: It's sort of a three-phase process. Phase

10:40AM **18** one, the cop comes and cuts with the bolt cutters. Number 2,

10:40AM **19** when an effort is made to put the handcuffs, the plastic

10:40AM **20** handcuffs on people, it was my impression that they go limp, that

10:41AM **21** is, they relax their bodies and go down, and therefore when they

10:41AM **22** are handcuffed they are usually in a prone or lying position. Is

10:41AM **23** that pursuant to your direction and guidance?

10:41AM **24** THE WITNESS: No, Your Honor. I simply said disengage the

10:41AM **25** reflex.

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10:41AM **1** THE COURT: Okay. Thank you. Cross-examine.

10:41AM **2** CROSS-EXAMINATION OF JAMES E. PIETRANGELO

10:41AM **3** BY MS. GEORGE:

10:41AM **4** Q. Good morning.

10:41AM **5** A. **Good morning, ma'am.**

10:41AM **6** Q. How are you?

10:41AM **7** A. **I'm fine, thank you.**

10:41AM **8** Q. Could you please tell me how you pronounce your last

10:41AM **9** name?

10:41AM **10** A. **Pietrangelo, like Michael Angelo but Pietrangelo.**

10:41AM **11** Q. Peter as in P-E-T-E?

10:41AM **12** A. **Yes, ma'am.**

10:41AM **13** Q. Pietrangelo?

10:41AM **14** A. **Yes, ma'am.**

10:41AM **15** Q. Thank you. So you said that you're friends with

10:41AM **16** Defendant Choi; is that correct?

10:41AM **17** A. **Yes, ma'am.**

10:41AM **18** Q. And could you please point to Defendant Choi?

10:41AM **19** A. **(Indicating). He's in a uniform at the defendant's**

10:42AM **20** **table.**

10:42AM **21** MS. GEORGE: Your Honor, please let the record reflect

10:42AM **22** that Mr. Pietrangelo identified the defendant.

10:42AM **23** THE COURT: It will.

10:42AM **24** BY MS. GEORGE:

10:42AM **25** Q. And you said that you are a lawyer, so you went to law

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10:42AM **1** school?

10:42AM **2** A. **Yes, ma'am.**

10:42AM **3** Q. And you have a law degree?

10:42AM **4** A. **Yes, ma'am.**

10:42AM **5** Q. And you've been admitted to the bar in how many states?

10:42AM **6** A. **Two, Ohio and Vermont.**

10:42AM **7** Q. Ohio and Vermont. And you met Mr. Choi in 2009; is that

10:42AM **8** correct?

10:42AM **9** A. **I spoke with him in 2009, yes, ma'am.**

10:42AM **10** Q. Okay. When did you actually meet him?

10:42AM **11** A. **In 2010.**

10:42AM **12** Q. In 2010. In what month of 2010?

10:42AM **13** A. **March.**

10:42AM **14** Q. March of 2010?

10:42AM **15** A. **Yes, ma'am.**

10:42AM **16** Q. Do you remember what day it was in March?

10:42AM **17** A. **It was March 17th.**

10:42AM **18** Q. March 17th. So, one day before you and Defendant Choi

10:42AM **19** went to the White House sidewalk and chained yourselves to the

10:43AM **20** White House?

10:43AM **21** MR. FELDMAN: Objection. The captain did not chain

10:43AM **22** himself to the White House at any point.

10:43AM **23** BY MS. GEORGE:

10:43AM **24** Q. Did you affix yourself to the White House fence on March

10:43AM **25** 18th?

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10:43AM	1	A.	Yes, ma'am.	
10:43AM	2	Q.	And with what?	
10:43AM	3	A.	With handcuffs.	
10:43AM	4	Q.	So you were connected with something metal to the White	
10:43AM	5		House fence?	
10:43AM	6	A.	I was connected by handcuffs to the White House fence.	
10:43AM	7	Q.	Yes. And they were metal; isn't that correct?	
10:43AM	8	A.	Yes, ma'am.	
10:43AM	9	Q.	And you were with Defendant Choi, correct?	
10:43AM	10	A.	Yes, ma'am.	
10:43AM	11	Q.	And he was handcuffed to the White House fence?	
10:43AM	12	A.	Yes, ma'am.	
10:43AM	13	Q.	Correct?	
10:43AM	14	A.	Yes, ma'am.	
10:43AM	15	Q.	But prior to March 17th, you communicated via e-mail,	
10:43AM	16		correct?	
10:43AM	17	A.	And telephone.	
10:43AM	18	Q.	And telephone. So, when did you start to speak with	
10:43AM	19		Defendant Choi via telephone?	
10:43AM	20	A.	When did I start to speak, is that what you said?	
10:43AM	21	Q.	You said you first contacted him by e-mail. When did you	
10:43AM	22		first start talking to him by telephone --	
10:43AM	23	A.	I believe it was approximately a week prior to the 17th.	
10:43AM	24	Q.	And the purpose of the e-mail and these telephone	
10:44AM	25		conversations was to get geared up to, quote-unquote, as you	
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10:44AM	1		describe it, with the freedom fighters; is that correct?	
10:44AM	2	A.	It was to discuss speaking at the White House.	
10:44AM	3	Q.	Right, to engage in your free speech, correct?	
10:44AM	4	A.	Yes, ma'am.	
10:44AM	5	Q.	And to voice your opinion about your cause that you	
10:44AM	6		talked about previously on direct examination, correct?	
10:44AM	7	A.	Yes, ma'am.	
10:44AM	8	Q.	And you mentioned -- did you have any meetings prior to	
10:44AM	9		March 17th with Defendant Choi?	
10:44AM	10	A.	Other than on the phone? No in-person meetings.	
10:44AM	11	Q.	On March 17th, where did you meet with Defendant Choi?	
10:44AM	12	A.	I met him here in D.C. at a private residence.	
10:44AM	13	Q.	And there were other people there; isn't that correct?	
10:44AM	14	A.	Yes, that's correct.	
10:44AM	15	Q.	And the discussion in that meeting was the cause that you	
10:44AM	16		went to the White House fence for, correct?	
10:44AM	17	A.	That's correct.	
10:44AM	18	Q.	And how you were going to effectuate voicing your views	
10:44AM	19		regarding that cause, correct?	
10:44AM	20	A.	That's correct.	
10:44AM	21	Q.	And at that meeting you specifically discussed the use of	
10:45AM	22		handcuffs; isn't that correct?	
10:45AM	23	A.	That's correct.	
10:45AM	24	Q.	And you specifically discussed that you wanted to chain	
10:45AM	25		yourself to the White House fence to focus on your cause; isn't	
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10:45AM	1		that correct, to bring more attention to your cause?	
10:45AM	2	A.	I don't recall that being said. I --	
10:45AM	3	Q.	So, did you bring up the idea of the handcuffs? Who	
10:45AM	4		brought up the idea of the handcuffs?	
10:45AM	5	A.	Dan Choi did.	
10:45AM	6	Q.	And since you are educated in the law and you were	
10:45AM	7		focusing on civil disobedience, you know there are many ways to	
10:45AM	8		chant and demonstrate and protest; isn't that correct?	
10:45AM	9	A.	Theoretically, I guess, yes.	
10:45AM	10	Q.	So you could have gone to the White House and just walked	
10:45AM	11		around on the White House sidewalk; isn't that correct, with	
10:45AM	12		signs; isn't that correct? You could have done that; isn't that	
10:45AM	13		correct?	
10:45AM	14	A.	I'm thinking. Could you give me a second, please. I	
10:46AM	15		imagine we could have done that.	
10:46AM	16	Q.	My question is just to your physical ability to do that.	
10:46AM	17		You could have shown up, walked with a sign, and gave the same	
10:46AM	18		chants that you gave on November 15th, 2010; isn't that correct?	
10:46AM	19	A.	Well, we're talking hypothetical, so I can't compare what	
10:46AM	20		could have happened with what did happen because it's dependent	
10:46AM	21		upon reality. Sometimes reality drives what happens, so --	
10:46AM	22	Q.	I'm not asking you to compare anything. I'm asking	
10:46AM	23		you -- you, as a former military person, you have the physical	
10:46AM	24		ability to use your legs and arms?	
10:46AM	25		MR. FELDMAN: Asked and answered.	
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10:46AM	1		THE WITNESS: Yes.	
10:46AM	2		BY MS. GEORGE:	
10:46AM	3	Q.	Isn't that correct?	
10:46AM	4	A.	Yes, that's correct.	
10:46AM	5	Q.	So you could have walked to the White House fence; isn't	
10:46AM	6		that correct?	
10:46AM	7	A.	Yes.	
10:46AM	8	Q.	And you could have had a sign in your hand; isn't that	
10:46AM	9		correct?	
10:46AM	10	A.	I haven't analyzed the legal issue, but I guess, yes.	
10:46AM	11	Q.	And you could have protested with the sign walking in	
10:46AM	12		front walking on the White House sidewalk; isn't that correct?	
10:46AM	13	A.	Theoretically, yes.	
10:46AM	14	Q.	Versus handcuffing yourself to the White House fence;	
10:47AM	15		isn't that correct?	
10:47AM	16	A.	Theoretically, yes.	
10:47AM	17	Q.	But you made a choice to handcuff yourself; isn't that	
10:47AM	18		correct?	
10:47AM	19	A.	That's -- yes, that's one of the rights that the	
10:47AM	20		Constitution gives, is that the speaker determines the mode of	
10:47AM	21		speech; not the government.	
10:47AM	22	Q.	Correct, but also the Constitution says you can't yell	
10:47AM	23		"fire" in a crowded movie theater, doesn't it?	
10:47AM	24		MR. FELDMAN: Objection, relevance. There's no fire here.	
10:47AM	25		THE COURT: I'll take judicial notice of the fact that the	
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10:47AM 1 Constitution doesn't say anything about fire in a crowded
 10:47AM 2 theatre. That's a reference to Justice Holmes's opinion. That's
 10:47AM 3 a reference to Justice Holmes's opinion. The question here is,
 10:47AM 4 as a lawyer, if you know, which I think Ms. George is drawing
 10:47AM 5 your attention to or trying to elicit from your testimony is
 10:47AM 6 that, as she sees it, those rights are not absolute.
 10:47AM 7 THE WITNESS: I understand, Your Honor.
 10:47AM 8 THE COURT: And concede that?
 10:47AM 9 THE WITNESS: I do.
 10:47AM 10 THE COURT: Thank you.
 10:47AM 11 BY MS. GEORGE:
 10:47AM 12 Q. And you understand that there are legal limits to your
 10:47AM 13 First Amendment rights; isn't that correct?
 10:47AM 14 A. **There's Constitutional limits that may involve the law,**
 10:48AM 15 **yes, ma'am.**
 10:48AM 16 Q. And the Constitution is a type of law, isn't it?
 10:48AM 17 A. **Yes, ma'am.**
 10:48AM 18 Q. So there are legal limits to your Constitutional rights?
 10:48AM 19 A. **I was just distinguishing between the Constitution and**
 10:48AM 20 **statutes and ordinances. A statute and an ordinance can be**
 10:48AM 21 **unconstitutional, so I just wanted to make the distinction.**
 10:48AM 22 Q. So there are legal limits, statutorily, case law, to your
 10:48AM 23 Constitutional rights, you do not have an unbridled
 10:48AM 24 Constitutional right to free speech; isn't that correct?
 10:48AM 25 A. **That's absolutely correct.**

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10:48AM 1 Q. Thank you. And Defendant Choi, in you speaking with him
 10:48AM 2 in this meeting on March 17th, he decided to handcuff himself.
 10:48AM 3 In fact, he's the one who brought it up, correct?
 10:48AM 4 MR. FELDMAN: Well, objection to the first part of the
 10:48AM 5 compound question and of commenting. No objection to the second
 10:48AM 6 part.
 10:48AM 7 THE COURT: All right. Do you understand?
 10:48AM 8 THE WITNESS: If she could repeat it, Your Honor.
 10:48AM 9 THE COURT: Please.
 10:48AM 10 BY MS. GEORGE:
 10:48AM 11 Q. Did you talk to Dan Choi in that meeting about
 10:48AM 12 handcuffing yourselves to the White House fence?
 10:48AM 13 A. **Yes.**
 10:48AM 14 MR. FELDMAN: That was asked and answered.
 10:49AM 15 THE COURT: He answered it.
 10:49AM 16 BY MS. GEORGE:
 10:49AM 17 Q. And did he state that he was going to handcuff himself to
 10:49AM 18 the White House fence?
 10:49AM 19 MR. FELDMAN: Objection.
 10:49AM 20 A. **Yes.**
 10:49AM 21 Q. And didn't he come up with the idea to handcuff himself
 10:49AM 22 to the White House fence?
 10:49AM 23 MR. FELDMAN: Asked and answered.
 10:49AM 24 THE COURT: Answer, please.
 10:49AM 25 THE WITNESS: Yes.

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10:49AM 1 BY MS. GEORGE:
 10:49AM 2 Q. And this was part of your pattern to bring forth your
 10:49AM 3 cause -- or bring attention to your cause; isn't that correct?
 10:49AM 4 MR. FELDMAN: Objection, facts not in evidence.
 10:49AM 5 THE COURT: No, that's overruled. Why were you going to
 10:49AM 6 do that. Maybe we can, if you don't mind -- you appreciated that
 10:49AM 7 if you did that, your arrest was inevitable; isn't that true?
 10:49AM 8 THE WITNESS: No, Your Honor, that was --
 10:49AM 9 THE COURT: Please explain the reasoning why you thought
 10:49AM 10 you would be able to avoid arrest if you chained yourself to the
 10:49AM 11 White House fence.
 10:49AM 12 THE WITNESS: Your Honor, I did not believe and I don't
 10:49AM 13 think anyone else believed that that was illegal. We believed it
 10:49AM 14 would draw further attention to the situation, but it was a prop
 10:50AM 15 to a speech.
 10:50AM 16 THE COURT: That's very important. Now, I'm sorry, but I
 10:50AM 17 have always thought that the effort of these 13 people that day
 10:50AM 18 was an act of classic American civil disobedience, i.e. to
 10:50AM 19 exercise their rights and then take the consequence of being
 10:50AM 20 arrested for doing so. Did you formulate your thinking that day
 10:50AM 21 along that line?
 10:50AM 22 THE WITNESS: Your Honor, my thinking was -- our thinking
 10:50AM 23 was not to violate the law. Our thinking was to engage in the
 10:50AM 24 speech which, because the government discriminates against gay
 10:50AM 25 people, would cause them -- might cause them to arrest us. In

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10:50AM 1 other words, it wasn't -- they wouldn't arrest us because we
 10:50AM 2 violated the law, they would arrest us because we were gay people
 10:50AM 3 demanding equality in front of the White House and they couldn't
 10:50AM 4 tolerate that.
 10:50AM 5 THE COURT: But you would appreciate with me under the
 10:51AM 6 O'Brien case which is the famous draft card burning case --
 10:51AM 7 THE WITNESS: Yes, Your Honor.
 10:51AM 8 THE COURT: We know the distinction the Supreme Court has
 10:51AM 9 drawn between speech and action. Did you contemplate that the
 10:51AM 10 act of chaining yourself to the fence would bring in its wake
 10:51AM 11 what did, in fact, occur, i.e., bolt cutters would be used, you
 10:51AM 12 would be removed and arrested?
 10:51AM 13 THE WITNESS: We believed that might happen, Your Honor.
 10:51AM 14 THE COURT: And you were willing to accept that
 10:51AM 15 consequence as the product of your civil disobedience?
 10:51AM 16 THE WITNESS: I was -- yes, Your Honor, I was willing to
 10:51AM 17 accept any consequence for the sake of demanding equality.
 10:51AM 18 THE COURT: I understand. So if that happened, so be it?
 10:51AM 19 THE WITNESS: Yes, Your Honor, but the intent -- but our
 10:51AM 20 intent was not to waive our rights to insist that we were
 10:51AM 21 innocent because we were innocent.
 10:51AM 22 THE COURT: I see. But if it came to be that you were
 10:52AM 23 going to be arrested, you would submit to those arrests
 10:52AM 24 nonviolently?
 10:52AM 25 THE WITNESS: Yes, Your Honor.

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10:52AM **1** THE COURT: Now, I guess I'm a bit startled. Did you

10:52AM **2** anticipate that chaining yourself to the White House would not

10:52AM **3** bring the use of power in the form of the bolt cutters to stop

10:52AM **4** that?

10:52AM **5** THE WITNESS: Your Honor, I honestly didn't -- that was

10:52AM **6** not an idea in my mind. I didn't know what was going to happen.

10:52AM **7** THE COURT: It is my understanding, and please correct me

10:52AM **8** if I'm wrong, you were not going to unchain yourselves until you

10:52AM **9** believed your demonstration was over. Was there an ultimate plan

10:52AM **10** that we will do this for X amount of time and then I will give

10:52AM **11** the signal and at that point we will unchain ourselves and go

10:52AM **12** home?

10:52AM **13** THE WITNESS: Not exactly, Your Honor. It was -- it

10:53AM **14** certainly was we were going to have our say, so to speak, and

10:53AM **15** when we were done, if we chose to, yes.

10:53AM **16** THE COURT: Chose to?

10:53AM **17** THE WITNESS: To dis -- to uncuff.

10:53AM **18** THE COURT: And then if, in the meanwhile, you had not

10:53AM **19** been arrested, the demonstration would have ended and you would

10:53AM **20** leave the premises?

10:53AM **21** THE WITNESS: We're talking the first arrest, Your Honor,

10:53AM **22** still? That was my intent, yes, sir.

10:53AM **23** THE COURT: When you say the first arrest, we're not

10:53AM **24** talking about the arrest on November 15th.

10:53AM **25** MS. GEORGE: No, I was inquiring about March 18.

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10:53AM **1** THE WITNESS: I wasn't arrested that day, Your Honor.

10:53AM **2** THE COURT: Let's get down to cases. Was the intention

10:53AM **3** different on November 15th?

10:53AM **4** THE WITNESS: I don't recall what -- I wasn't speaking

10:53AM **5** with the other 13. I was on the bullhorn, Your Honor.

10:53AM **6** THE COURT: I know, but before that occurred, did you meet

10:53AM **7** with these folks and discuss what was going to happen?

10:53AM **8** THE WITNESS: Yes, Your Honor.

10:53AM **9** THE COURT: And was there a discussion of what would

10:54AM **10** happen if you chained yourself to the White House fence?

10:54AM **11** THE WITNESS: Again, Your Honor, I think it was the same

10:54AM **12** as the two previous times, which is that we discussed that it

10:54AM **13** might invite arrest.

10:54AM **14** THE COURT: And if it did -- and you also, I take it, had

10:54AM **15** concluded that if there was movement toward you by police

10:54AM **16** authorities, you would not unchain yourselves but instead would

10:54AM **17** submit to arrest?

10:54AM **18** THE WITNESS: Yes, Your Honor.

10:54AM **19** THE COURT: Because that would be most consistent with

10:54AM **20** your philosophical belief that we are to be heard until we are

10:54AM **21** finished and we will decide when we are finished.

10:54AM **22** THE WITNESS: Yes, Your Honor.

10:54AM **23** THE COURT: Thank you very much.

10:54AM **24** BY MS. GEORGE:

10:54AM **25** Q. Mr. Pietrangolo, taking you back to March 18th, 2010, you

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10:54AM **1** indicated that you were going to stay handcuffed to the fence

10:54AM **2** until you were heard about your causes?

10:54AM **3** MR. FELDMAN: Asked and answered by the eminent Court much

10:54AM **4** more articulately asked.

10:54AM **5** THE COURT: All right. Overruled. Thank you for the

10:54AM **6** compliment, but overruled.

10:55AM **7** THE WITNESS: Yes.

10:55AM **8** BY MS. GEORGE:

10:55AM **9** Q. And you told the Court you were willing to stay

10:55AM **10** handcuffed until you decided to unhandcuff yourself; is that

10:55AM **11** correct?

10:55AM **12** A. **Until we had finished speaking.**

10:55AM **13** Q. All right. And so Mr. Choi, Defendant Choi was part of

10:55AM **14** that conversation in the meeting on March 17th when you

10:55AM **15** discussed those particular issues?

10:55AM **16** A. **Yes.**

10:55AM **17** Q. Handcuffing and unhandcuffing, correct?

10:55AM **18** A. **Yes.**

10:55AM **19** Q. And so you had handcuff keys on your person; isn't that

10:55AM **20** correct?

10:55AM **21** A. **At what point?**

10:55AM **22** Q. On March 18th. If you were going to unhandcuff yourself,

10:55AM **23** you had to have a handcuff key; is that correct?

10:55AM **24** A. **I could only speak to myself. I had -- I could only**

10:55AM **25** **speak on that -- on that morning, I could only speak to myself.**

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10:55AM **1** **I had a handcuff key. I don't recall whether Dan did.**

10:55AM **2** Q. But if Dan indicated to you that he wanted to be

10:55AM **3** unhandcuffed, you would have unhandcuffed him; isn't that

10:55AM **4** correct?

10:55AM **5** A. **I'm not sure if my key would have worked on his set of**

10:56AM **6** **handcuffs.**

10:56AM **7** Q. But you would have tried. If Defendant Choi said, we're

10:56AM **8** done protesting about this cause, I'm ready to go, do you have a

10:56AM **9** handcuff key, can you unhandcuff me, try to unhandcuff me --

10:56AM **10** MR. FELDMAN: Objection, Your Honor.

10:56AM **11** BY MS. GEORGE:

10:56AM **12** Q. -- you would have done it?

10:56AM **13** MR. FELDMAN: Assuming facts not in evidence. There's

10:56AM **14** some indication from government witnesses that some of these keys

10:56AM **15** may fit other ones. There's no indication that the Captain's key

10:56AM **16** would have fit the Lieutenant's cuffs.

10:56AM **17** THE COURT: But in any event, there was never a point, as

10:56AM **18** you explained to me, that there would come a time and the

10:56AM **19** signal -- my signal or someone else's signal, we will decide that

10:56AM **20** we are finished, uncuff ourselves and leave. That was not part

10:56AM **21** of the plan, was it?

10:56AM **22** THE WITNESS: The signal part, no, Your Honor. I don't --

10:56AM **23** not every aspect was planned out. Our intent was to speak and to

10:56AM **24** make sure that we completed our speaking. I'm not sure what

10:56AM **25** else -- I'm not sure if I follow you.

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10:57AM **1** THE COURT: Maybe we can put this in a historical context.

10:57AM **2** If, as occurred in the '50s, you were protesting, you were

10:57AM **3** an African-American and you were protesting that you couldn't be

10:57AM **4** served at the counter in Greensboro, North Carolina, you sat

10:57AM **5** there, and you were asked to leave and you continued to sit there

10:57AM **6** until the police came and took you, all right, that's the classic

10:57AM **7** civil disobedience. So the instructions are not stay there and

10:57AM **8** then get up when the cops come, they are stay there. Your model,

10:57AM **9** I take it, was in that tradition, we will be heard, we will chain

10:57AM **10** ourselves, and we will not leave until we are finished; is that

10:57AM **11** right?

10:57AM **12** THE WITNESS: Yes, Your Honor.

10:57AM **13** THE COURT: Thank you.

10:57AM **14** BY MS. GEORGE:

10:57AM **15** Q. So following that line of thought, you were willing to

10:57AM **16** get arrested -- I'm talking about on March 18th -- you were

10:57AM **17** willing to get arrested?

10:57AM **18** A. **We were going to speak no matter what the consequence.**

10:57AM **19** Q. Right. So if that meant you getting arrested, you would

10:58AM **20** have been arrested?

10:58AM **21** MR. FELDMAN: Asked and answered a third or fourth time,

10:58AM **22** Judge.

10:58AM **23** THE COURT: I think we have it. Thank you.

10:58AM **24** THE WITNESS: Yes.

10:58AM **25** MS. GEORGE: And Your Honor, for the record, before I ask

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10:58AM **1** this question, Mr. Feldman asked several questions about why the

10:58AM **2** police officers didn't ask for them to be unhooked from the fence

10:58AM **3** or offer for them to be unhooked from the fence. These questions

10:58AM **4** go directly to his cross-examination.

10:58AM **5** THE COURT: Go ahead, please. I think at this point, and

10:58AM **6** I think it's a point fairly well taken, is that that question had

10:58AM **7** been unequivocally conceded in response to my questions and

10:58AM **8** yours, that they were going to stay and they knew they were going

10:58AM **9** to get arrested.

10:58AM **10** BY MS. GEORGE:

10:58AM **11** Q. And when you say "they," you mean Mr. Choi as well; isn't

10:58AM **12** that true?

10:58AM **13** THE COURT: Of the 13 people who were there?

10:58AM **14** MS. GEORGE: I'm not talking about the 15th, I'm talking

10:58AM **15** about March 18th.

10:58AM **16** MR. FELDMAN: Judge, again, I'm going to object because it

10:58AM **17** is, in my humble opinion, unethical once the Court rules to ask

10:58AM **18** the Court more than one time, in my humble opinion, in my humble

10:59AM **19** experience of 31 years, more than one time is rude and unethical

10:59AM **20** and I object. It's not the first time, Judge. I more vigorously

10:59AM **21** object now because it's my case.

10:59AM **22** THE COURT: All right. Ms. George, please proceed.

10:59AM **23** MS. GEORGE: Thank you.

10:59AM **24** BY MS. GEORGE:

10:59AM **25** Q. Let me ask it this way so the Court can have an

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10:59AM **1** understanding how many times you were arrested with Mr. Choi at

10:59AM **2** the White House fence. So, focusing on March 18th, 2010, you

10:59AM **3** were arrested with him at the White House fence; is that

10:59AM **4** correct?

10:59AM **5** THE WITNESS: Yes, Your Honor.

10:59AM **6** BY MS. GEORGE:

10:59AM **7** Q. It was just you and him handcuffed to the fence, that's

10:59AM **8** it; is that correct?

10:59AM **9** A. **That's correct, yes.**

10:59AM **10** Q. And before you got to the fence, you actually walked down

10:59AM **11** Pennsylvania Avenue, you and Mr. Choi, with some civilians

10:59AM **12** following behind you; isn't that correct?

10:59AM **13** A. **If I could just clarify something, my previous answer.**

10:59AM **14** **Dan and I were on the fence -- the only ones on the fence on**

10:59AM **15** **March 18th, but there was a third person arrested that day but**

11:00AM **16** **she was not on the fence.**

11:00AM **17** Q. I wasn't asking about anybody else who wasn't arrested.

11:00AM **18** A. **I just wanted to clarify.**

11:00AM **19** Q. You and Mr. Choi were handcuffed to the fence on March

11:00AM **20** 18th and you were arrested; isn't that correct?

11:00AM **21** A. **Yes, ma'am.**

11:00AM **22** Q. And prior to being on the fence, you and Mr. Choi met up

11:00AM **23** somewhere and then you arrived at Pennsylvania Avenue; isn't

11:00AM **24** that correct?

11:00AM **25** A. **Yes, that's correct.**

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11:00AM **1** Q. And then you walked down Pennsylvania Avenue towards the

11:00AM **2** White House fence; isn't that correct?

11:00AM **3** A. **Yes.**

11:00AM **4** Q. And on that day you had some civilians following you;

11:00AM **5** isn't that correct?

11:00AM **6** A. **That's correct.**

11:00AM **7** Q. Because having those people behind you, you wanted to

11:00AM **8** highlight your cause and show your dedication and you said

11:00AM **9** commitment to activism; isn't that correct?

11:00AM **10** A. **I'm not sure that was the exact purpose. I mean, I guess**

11:00AM **11** **generally speaking we invited a crowd to go with us to the White**

11:00AM **12** **House in support of what we were doing and they followed, yes:**

11:00AM **13** Q. Okay. And you ended up getting handcuffed there?

11:00AM **14** THE WITNESS: I'm sorry?

11:01AM **15** MS. GEORGE: You end up getting handcuffed.

11:01AM **16** MR. FELDMAN: Objection. He didn't get handcuffed, he

11:01AM **17** handcuffed himself.

11:01AM **18** THE COURT: That's true. No one handcuffed you there; you

11:01AM **19** handcuffed yourself?

11:01AM **20** THE WITNESS: I handcuffed myself, Your Honor.

11:01AM **21** THE COURT: And this is all on March 18th?

11:01AM **22** THE WITNESS: Yes, Your Honor.

11:01AM **23** MS. GEORGE: And after you arrived to the White House

11:01AM **24** fence, eventually some law enforcement officers showed up; isn't

11:01AM **25** that correct?

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11:01AM **1** THE WITNESS: Some were present, additional showed up,
 11:01AM **2** yes, ma'am.
 11:01AM **3** BY MS. GEORGE:
 11:01AM **4** **Q.** Yes. And then they told you that you needed to leave the
 11:01AM **5** White House fence; isn't that correct?
 11:01AM **6** THE WITNESS: I'd like a moment to think about that, if I
 11:01AM **7** may, Your Honor.
 11:01AM **8** THE COURT: Sure.
 11:01AM **9** THE WITNESS: I don't honestly recall exactly what they
 11:01AM **10** said.
 11:01AM **11** BY MS. GEORGE:
 11:01AM **12** **Q.** But they had a discussion with you about leaving that
 11:01AM **13** area where you had handcuffed yourself to; isn't that correct?
 11:01AM **14** **A.** **I -- we certainly were spoken to by park police officers.**
 11:02AM **15** **I don't recall exactly what they said. I simply don't.**
 11:02AM **16** **Q.** Okay. If there was a video of what they said, would that
 11:02AM **17** refresh your recollection as to what was told to you?
 11:02AM **18** **A.** **It might possibly.**
 11:02AM **19** **Q.** And before they -- let's assume you didn't hear. So
 11:02AM **20** before they stated --
 11:02AM **21** MR. FELDMAN: Objection. Wait, wait, wait, wait. He
 11:02AM **22** never said he didn't hear. He said he didn't recall what they
 11:02AM **23** said. There's a big difference.
 11:02AM **24** THE COURT: With that correction, I think that's correct.
 11:02AM **25** You don't recall?

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11:02AM **1** THE WITNESS: That's right, Your Honor. I recall them
 11:02AM **2** speaking to us Your Honor, I don't recall exactly what they said.
 11:02AM **3** THE COURT: If there was a video, that would refresh your
 11:02AM **4** recollection, and you said yes; is that right?
 11:02AM **5** THE WITNESS: Yes, Your Honor.
 11:02AM **6** THE COURT: Thank you, sir.
 11:02AM **7** BY MS. GEORGE:
 11:02AM **8** **Q.** And before they started speaking to you, the police
 11:02AM **9** officers actually set up a perimeter that enclosed you and
 11:02AM **10** Mr. Choi on the White House fence; they put up yellow tape;
 11:03AM **11** isn't that correct?
 11:03AM **12** **A.** **Yes and no. I don't know if it was -- I don't know at**
 11:03AM **13** **what point in their interaction with us they closed it off, but**
 11:03AM **14** **at some point it was closed off, and I'm not sure if it was with**
 11:03AM **15** **tape or barricades, but they did close it off from what I**
 11:03AM **16** **recall, yes, ma'am.**
 11:03AM **17** **Q.** And then after they closed it off, they made warnings to
 11:03AM **18** you; isn't that correct?
 11:03AM **19** **A.** **I do recall something was said over the speakerphone. I**
 11:03AM **20** **don't recall what.**
 11:03AM **21** **Q.** Okay.
 11:03AM **22** **A.** **I don't recall what.**
 11:03AM **23** **Q.** And something was said over the speakerphone on one
 11:03AM **24** occasion, and then there was a passage of time; isn't that
 11:03AM **25** correct?

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11:03AM **1** **A.** **Um, time did pass after the first arrest, yes.**
 11:04AM **2** THE COURT: No, don't say arrest; the first announcement.
 11:04AM **3** You said arrest. Did you mean to say arrest?
 11:04AM **4** THE WITNESS: Yes, sir. Are you asking about the second
 11:04AM **5** arrest?
 11:04AM **6** BY MS. GEORGE:
 11:04AM **7** **Q.** No, I'm asking about March 18th, and you said that
 11:04AM **8** something was said to you over the speakerphone.
 11:04AM **9** **A.** **Yes.**
 11:04AM **10** **Q.** And I said some passage of time went by after that first
 11:04AM **11** statement until --
 11:04AM **12** MR. FELDMAN: Objection. Time always passes after any
 11:04AM **13** event, including on the alleged morning.
 11:04AM **14** THE COURT: I think I understand. And you were a little
 11:04AM **15** overly confused here. She's asking about March 18th. There's
 11:04AM **16** the utterance of some word on the speakerphone and the question
 11:04AM **17** is, did some time pass before something else occurred?
 11:04AM **18** MR. FELDMAN: Objection to that. Time always passes
 11:04AM **19** before -- I rarely object to the Court.
 11:04AM **20** THE COURT: We can be a little less exponential. After
 11:04AM **21** that announcement, did something else happen?
 11:04AM **22** THE WITNESS: Yes, Your Honor.
 11:04AM **23** THE COURT: Tell us what.
 11:04AM **24** THE WITNESS: If I could just -- Your Honor, if I could
 11:05AM **25** just explain one thing, and I'm a little bit embarrassed to admit

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11:05AM **1** this, but that's the first time that I was sort of chained to the
 11:05AM **2** White House fence, so a lot of it sort of is going in slow motion
 11:05AM **3** at a certain point.
 11:05AM **4** THE COURT: That's perfectly understandable. Just tell me
 11:05AM **5** as best as you can what happened.
 11:05AM **6** THE WITNESS: Well, the crowds -- they cordoned off the
 11:05AM **7** street. I remember other officers arriving. I remember a big
 11:05AM **8** crowd developing. I remember press being there. I remember Dan
 11:05AM **9** speaking from the fence. And I remember subsequent things were
 11:05AM **10** said over the car amplification system. Again, I don't recall
 11:05AM **11** what.
 11:05AM **12** THE COURT: Do you remember more than one such
 11:05AM **13** amplification emanating from that call?
 11:05AM **14** THE WITNESS: Yes, Your Honor.
 11:05AM **15** THE COURT: And obviously there was one and then there was
 11:05AM **16** another?
 11:05AM **17** THE WITNESS: There was another.
 11:05AM **18** THE COURT: Can you estimate the amount of time that
 11:05AM **19** elapsed between the two?
 11:05AM **20** THE WITNESS: It was minutes, but I don't remember how
 11:06AM **21** many, Your Honor.
 11:06AM **22** THE COURT: I think that's it. Thank you.
 11:06AM **23** MS. GEORGE: Your Honor, I have an exhibit here marked as
 11:06AM **24** Government's Exhibit 16, which is some YouTube coverage of the
 11:06AM **25** previous testimony that Mr. Pietrangelo described of he and

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11:06AM **1** Mr. Choi approaching the White House fence.

11:06AM **2** THE COURT: On March 18th?

11:06AM **3** MS. GEORGE: Yes, on March 18th.

11:06AM **4** THE COURT: Any objection to my seeing it?

11:06AM **5** MR. FELDMAN: Have I seen this? Has it been provided to

11:06AM **6** me?

11:06AM **7** MS. GEORGE: I believe we did provide copies.

11:06AM **8** MR. FELDMAN: I need to see it before I can say that it

11:06AM **9** was provided to me. I need to look at it, Judge.

11:06AM **10** THE COURT: All right. How long is it?

11:06AM **11** MS. GEORGE: It's probably about four or five minutes,

11:06AM **12** Your Honor.

11:06AM **13** THE COURT: All right. Since it may or may not come into

11:06AM **14** evidence, I think I should leave the bench so you can see it.

11:06AM **15** I'll be right back here.

11:06AM **16** (Thereupon, a break was had from 11:06 a.m. until

11:14AM **17** 11:14 a.m.)

11:14AM **18** MR. FELDMAN: Judge, before we begin, I'm sorry. There is

11:14AM **19** somebody else at counsel table who, with the Court's permission,

11:14AM **20** will be assisting me if I need it. He's the -- Norman Elliott

11:14AM **21** Kent from Ft. Lauderdale, Your Honor.

11:14AM **22** THE COURT: Welcome back.

11:14AM **23** MR. KENT: Delayed by 24 hours thanks to Hurricane Irene.

11:14AM **24** THE COURT: You're here.

11:14AM **25** MS. GEORGE: Your Honor, just for the record, when the

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11:14AM **1** Court left, the government was going to show Mr. Feldman

11:14AM **2** Government's Exhibit Number 16. However, the CD or DVD that's

11:14AM **3** been marked as Government's Exhibit Number 16 would not play in

11:14AM **4** the DVD player, so then I inserted Government's Exhibit 46, which

11:15AM **5** was previously provided to Mr. Feldman's paralegal -- I'm sorry,

11:15AM **6** 45, which was previously provided to defense counsel, and

11:15AM **7** Mr. Feldman says he has no objection to it being entered into

11:15AM **8** evidence at this time.

11:15AM **9** MR. FELDMAN: That's correct, Your Honor. Without

11:15AM **10** objection, Your Honor.

11:15AM **11** (Government's Exhibit 45 admitted into evidence.)

11:15AM **12** THE COURT: Thank you. And I am to see it, I think.

11:15AM **13** MS. GEORGE: State that again.

11:15AM **14** THE COURT: I am to see it?

11:15AM **15** MS. GEORGE: Yes. I'm going to play it right now.

11:15AM **16** THE COURT: Thank you.

11:15AM **17** (Videotape played.)

11:15AM **18** MS. GEORGE:

11:15AM **19** Q. Mr. Pietrangelo, that is Dan Choi, correct?

11:15AM **20** A. **Yes, ma'am.**

11:15AM **21** Q. And did you see the first frame of Government's

11:16AM **22** Exhibit 46?

11:16AM **23** A. **Yes.**

11:16AM **24** Q. And you're standing, if you're facing the White House, to

11:16AM **25** his right; isn't that correct?

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11:16AM **1** A. **Yes, ma'am.**

11:16AM **2** Q. And you're also handcuffed to the fence; isn't that

11:16AM **3** correct?

11:16AM **4** A. **He and I are both handcuffed to the fence, that's right.**

11:16AM **5** (Videotape played.)

11:16AM **6** BY MS. GEORGE:

11:20AM **7** Q. Now, Mr. Pietrangelo, you see in this frame there's two

11:20AM **8** officers in black uniforms and then one African-American officer

11:20AM **9** in a light blue long sleeved shirt. Do you do you see that in

11:20AM **10** this frame?

11:20AM **11** A. **Yes, ma'am.**

11:20AM **12** Q. And the officer that's in the black uniform that does not

11:20AM **13** have a hat on, he actually used a key to unhandcuff you, didn't

11:21AM **14** he?

11:21AM **15** THE WITNESS: He actually did what?

11:21AM **16** BY MS. GEORGE:

11:21AM **17** Q. Used a handcuff key to unhandcuff you, didn't he?

11:21AM **18** A. **I can't tell what he did.**

11:21AM **19** Q. On the video, you're saying you can't tell what he did?

11:21AM **20** A. **I wasn't actually looking at that point on the video. If**

11:21AM **21** **you can replay it, please.**

11:21AM **22** Q. I can rewind it for you. Let me just ask you this

11:21AM **23** question. Are you saying you don't have an independent

11:21AM **24** recollection of what that officer did that day?

11:21AM **25** A. **No, I wasn't looking down there. So no, ma'am, I don't.**

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11:21AM **1** Q. So you don't remember what happened?

11:21AM **2** MR. FELDMAN: Asked and answered. That's the third time.

11:21AM **3** THE COURT: I think we got it. So, obviously, no one is

11:21AM **4** holding bolt cutters in this frame, right?

11:21AM **5** THE WITNESS: Right. On the video, Your Honor, yes.

11:21AM **6** THE COURT: You don't remember bolt cutters that day, do

11:21AM **7** you, that were used?

11:21AM **8** THE WITNESS: I don't, Your Honor. I was concentrating on

11:21AM **9** looking forward and --

11:21AM **10** THE COURT: And you --

11:21AM **11** MR. FELDMAN: Judge, I think you were cutting him off,

11:21AM **12** with all due respect, Your Honor.

11:21AM **13** THE COURT: I'm sorry. What did you mean to say?

11:21AM **14** THE WITNESS: Your Honor, I was concentrating on looking

11:21AM **15** forward.

11:21AM **16** THE COURT: I got you.

11:21AM **17** BY MS. GEORGE:

11:21AM **18** Q. Well, I'm rewinding it and I'll replay it so you can look

11:22AM **19** at it, okay.

11:22AM **20** (Videotape played.)

11:22AM **21** BY MS. GEORGE:

11:22AM **22** Q. So at that point, you didn't unhandcuff yourself from the

11:22AM **23** fence, did you?

11:22AM **24** A. **No.**

11:22AM **25** Q. So you remember that you didn't use your key that you had

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11:22AM **1** in your pocket; isn't that correct?

11:22AM **2 A. Yes, ma'am.**

11:22AM **3 Q.** And Mr. Choi didn't ask you to unhandcuff him, did he?

11:22AM **4 A. I don't recall that he did, no, ma'am.**

11:22AM **5 Q.** But did it show on the video him speaking to you during

11:22AM **6** this point in time?

11:22AM **7** MR. FELDMAN: Objection as to the form, Judge. How can a

11:22AM **8** video show him talking to you? And at which particular time?

11:22AM **9** THE COURT: No, I think it was clear. In the video, as

11:22AM **10** you observed it, sir, did you see the gentleman who was to your

11:22AM **11** left identified as the defendant, did you see him speak to you?

11:22AM **12** THE WITNESS: No, sir.

11:22AM **13** BY MS. GEORGE:

11:22AM **14 Q.** Thank you.

11:22AM **15** MS. GEORGE: Thank you, Your Honor.

11:22AM **16** (Videotape played.)

11:26AM **17** MS. GEORGE: Your Honor, is the Court finished watching?

11:26AM **18** I can top it.

11:26AM **19** THE COURT: It's your evidence.

11:26AM **20** MR. FELDMAN: Can I have a second, Judge?

11:26AM **21** THE COURT: Yes.

11:26AM **22** MR. FELDMAN: Can you please put that back on. Can I have

11:26AM **23** a second?

11:26AM **24** (Discussion had off the record.)

11:26AM **25** MR. FELDMAN: I would like to discuss this privately, with

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11:26AM **1** the Court's permission.

11:26AM **2** THE COURT: Thank you. I think he wants you to go with

11:26AM **3** him. Just stand back there. It's just like coming to the bench,

11:26AM **4** but do it the other way.

11:26AM **5** (Discussion had off the record.)

11:26AM **6** MR. FELDMAN: I ask that it all be played, Judge.

11:26AM **7** THE COURT: Why don't you finish, please.

11:26AM **8** MR. FELDMAN: For the record, I won't give the private

11:26AM **9** conversation we had. I tried to resolve it.

11:27AM **10** MS. GEORGE: I'm not --

11:27AM **11** THE COURT: Excuse me. Please don't shout.

11:27AM **12** MR. FELDMAN: I'm not trying to be --

11:27AM **13** THE COURT: Play the rest of the DVD.

11:27AM **14** MS. GEORGE: Did the Court want to see the rest of the

11:27AM **15** DVD?

11:27AM **16** THE COURT: I do.

11:27AM **17** MR. FELDMAN: Thank you, Your Honor.

11:27AM **18** THE COURT: I can't imagine it's much longer.

11:27AM **19** MR. FELDMAN: I tried to determine that, Your Honor.

11:27AM **20** THE COURT: All right. Let's see it.

11:27AM **21** (Videotape played.)

11:28AM **22** THE COURT: Can we all agree we can stop now? Counselor,

11:28AM **23** can we stop now?

11:28AM **24** MR. FELDMAN: Can I ask my client, Judge?

11:28AM **25** (Discussion had off the record between Court and counsel.)

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11:28AM **1** MR. FELDMAN: No, no. My client wants to see the whole

11:28AM **2** thing.

11:28AM **3** MS. GEORGE: It stopped on its own.

11:28AM **4** MR. FELDMAN: Then I stand corrected.

11:28AM **5** I'm sorry, sir.

11:28AM **6** THE COURT: All right. It's in evidence. Thank you very

11:28AM **7** much. Your question then.

11:28AM **8** BY MS. GEORGE:

11:28AM **9 Q.** Prior to -- you said there was a meeting on March 17th,

11:28AM **10** correct?

11:28AM **11 A. Yes.**

11:28AM **12 Q.** And in that meeting you and Mr. Choi planned the incident

11:28AM **13** that's memorialized on Government's Exhibit's Exhibit 46; is

11:28AM **14** that correct?

11:28AM **15 A. Well, we planned our actions, yes, ma'am.**

11:28AM **16 Q.** And I'm sorry, Government's Exhibit 45, which you just

11:28AM **17** viewed, showed your actions on March 18th at the White House

11:28AM **18** fence; isn't that correct?

11:28AM **19 A. Yes, ma'am.**

11:28AM **20 Q.** And in that meeting, you discussed to put on, as you

11:28AM **21** described it to the Judge, your military BDUs; is that correct?

11:28AM **22 A. ACUs, yes, ma'am.**

11:29AM **23 Q.** ACUs?

11:29AM **24 A. ACUs, yes, ma'am, the same thing as BDUs, it's a**

11:29AM **25 different, newer terminology.**

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11:29AM **1 Q.** But you described it earlier as BDUs; isn't that correct?

11:29AM **2** MR. FELDMAN: Objection. He said before that that was the

11:29AM **3** old fashioned way, and Your Honor said the real old fashion way

11:29AM **4** is fatigues.

11:29AM **5** THE COURT: That's right.

11:29AM **6** MS. GEORGE: Your Honor, I'm just trying to tie them up to

11:29AM **7** make sure the record is correct.

11:29AM **8** THE COURT: Please proceed. Thank you.

11:29AM **9** BY MS. GEORGE:

11:29AM **10 Q.** And at that preplanning meeting -- earlier you said,

11:29AM **11** before you talked about the March 17th, that you were the legal

11:29AM **12** advisor or you gave advice to this group as to how they could

11:29AM **13** not break the law or what the laws were; is that not correct?

11:29AM **14 A. No, ma'am, I did not testify to that.**

11:29AM **15 Q.** All right. You did not provide any legal advice in the

11:29AM **16** planning meeting on March 17th, 2010?

11:29AM **17 A. That's correct. I never advised anyone. I provided**

11:29AM **18 information and my personal preferences.**

11:29AM **19 Q.** With regard to the nonviolence; is that correct?

11:29AM **20 A. Yes, ma'am.**

11:29AM **21 Q.** So you're telling this Court that on March 17th, there's

11:29AM **22** no discussion about what actions may result in you and Mr. Choi

11:30AM **23** being arrested?

11:30AM **24 A. As I testified before, we discussed engaging in the free**

11:30AM **25 speech and that that might trigger arrests.**

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11:30AM	1	Q. The free speech, but it was also coupled by your conduct
11:30AM	2	walking on the White House sidewalk; isn't that correct?
11:30AM	3	MR. FELDMAN: Objection. Conduct is speech. Does Your
11:30AM	4	Honor want the cases?
11:30AM	5	THE COURT: No. I'm familiar with the cases. I think
11:30AM	6	we're quibbling over legal issues, but the point is -- would you
11:30AM	7	state your question?
11:30AM	8	MS. GEORGE: My question is, Your Honor, that you went
11:30AM	9	there to exercise free speech; isn't that correct?
11:30AM	10	A. Yes, ma'am.
11:30AM	11	BY MS. GEORGE:
11:30AM	12	Q. And in exercising that free speech, you walked on the
11:30AM	13	White House sidewalk; isn't that correct?
11:30AM	14	MR. FELDMAN: Asked and answered in the video a third
11:30AM	15	time.
11:30AM	16	THE COURT: I think you objected. Obviously you walked on
11:30AM	17	the White House sidewalk to get where you were.
11:30AM	18	THE WITNESS: Yes, sir.
11:30AM	19	BY MS. GEORGE:
11:30AM	20	Q. And you stepped up on the ledge that's connected to the
11:30AM	21	White House fence that you were handcuffed to; isn't that
11:31AM	22	correct?
11:31AM	23	A. We stepped up on the pedestal, the base of the fence,
11:31AM	24	yes, ma'am.
11:31AM	25	Q. Yes. And on March 17th, you and Mr. Choi discussed
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11:31AM	1	taking those actions in addition to exercising your free speech;
11:31AM	2	isn't that correct?
11:31AM	3	MR. FELDMAN: Objection. It's not in addition, it's the
11:31AM	4	speech. I think -- I was hoping the government would have an
11:31AM	5	attorney who knows the law.
11:31AM	6	THE COURT: Let me see if I understand something. Did you
11:31AM	7	have a discussion with the defendant on March 17th of how you
11:31AM	8	would proceed that day?
11:31AM	9	THE WITNESS: Yes, Your Honor.
11:31AM	10	THE COURT: And did it involve walking to the place you
11:31AM	11	walked to?
11:31AM	12	THE WITNESS: Yes, Your Honor.
11:31AM	13	THE COURT: Did you discuss in any way the legal
11:31AM	14	implications of your doing that?
11:31AM	15	THE WITNESS: That it might involve arrests, Your Honor,
11:31AM	16	and that it was legal to be on the masonry base.
11:31AM	17	THE COURT: You felt -- it was in your view that it was
11:31AM	18	appropriate to be there on the base?
11:31AM	19	MR. FELDMAN: Well, objection to the -- I hate -- for the
11:31AM	20	record, is the question appropriate or legal or both? Because
11:32AM	21	you changed it.
11:32AM	22	THE COURT: I tried to capture your word. I thought you
11:32AM	23	said appropriate, or did I say appropriate? Well, whichever I
11:32AM	24	said, did you give any thought in your own mind to the
11:32AM	25	legitimacy, as a matter of law, to mounting that ledge?
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11:32AM	1	THE WITNESS: Yes, Your Honor.
11:32AM	2	THE COURT: And what conclusion, if any, did you reach?
11:32AM	3	THE WITNESS: If we were on the ledge, we were legally
11:32AM	4	safe because it was not the sidewalk.
11:32AM	5	THE COURT: Thank you.
11:32AM	6	BY MS. GEORGE:
11:32AM	7	Q. And then after you were at the White House fence on March
11:32AM	8	18, you -- on March 18th you were arrested and you saw that on
11:32AM	9	the exhibit; isn't that correct, on Exhibit 45?
11:32AM	10	A. Just now.
11:32AM	11	Q. And then you went to Superior Court; isn't that correct?
11:32AM	12	A. At some point, yes, ma'am, we were booked at the police
11:32AM	13	headquarters, and then we were transferred to the D.C. cell
11:32AM	14	blocks, and then the next day we appeared in D.C. Superior
11:33AM	15	Court, yes, ma'am.
11:33AM	16	Q. And you were released on March 19th; isn't that correct?
11:33AM	17	A. Yes, ma'am.
11:33AM	18	Q. And then you and Defendant Choi stood in front of the
11:33AM	19	D.C. Superior Court courthouse and gave a speech; isn't that
11:33AM	20	correct?
11:33AM	21	A. We appeared in front of the courthouse. We took photos.
11:33AM	22	I'm not sure if we spoke with some people, and I'm not sure -- I
11:33AM	23	don't recall giving a speech, but we certainly said -- we spoke
11:33AM	24	with people.
11:33AM	25	Q. But Mr. Choi was actually the one doing the speaking;
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11:33AM	1	isn't that correct, in front of the courthouse?
11:33AM	2	A. In all honesty, ma'am, I just remember meeting people and
11:33AM	3	Dan and I meeting people and speaking with them. That's what I
11:33AM	4	recall.
11:33AM	5	Q. You don't recall talking to the media in front of the
11:33AM	6	courthouse?
11:33AM	7	MR. FELDMAN: Objection. In this day and age in the 21st
11:33AM	8	century, one must define media, and I think you understand what I
11:33AM	9	mean, Judge.
11:33AM	10	THE COURT: Every once in a while in this courthouse you
11:33AM	11	walk outside and there are literally a bank of microphones. And
11:33AM	12	people walk up to them and there's a question, what happened
11:33AM	13	today, who are you, whatever. Let's call that the media, whether
11:34AM	14	they're bloggers or whatever; that is, they are people who are
11:34AM	15	interested in asking questions for dissemination to the public.
11:34AM	16	Is that what happened? You walked out and there were a bank of
11:34AM	17	people waiting for you, some with microphones, some with tape
11:34AM	18	recorders?
11:34AM	19	THE WITNESS: I barely -- Your Honor, I've been to several
11:34AM	20	of these events, so I think I recall that there was maybe a
11:34AM	21	photographer and a reporter, at least. It's -- those parts are
11:34AM	22	merging together, but I believe so, Your Honor.
11:34AM	23	BY MS. GEORGE:
11:34AM	24	Q. And if you saw a video of that, would it refresh your
11:34AM	25	recollection as to the details?
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11:34AM **1 A. It certainly would, yes.**
 11:34AM **2** MS. GEORGE: Your Honor, that's government's --
 11:34AM **3** MR. FELDMAN: That's consented. That was previously
 11:34AM **4** given. I've seen it. Let's do it.
 11:34AM **5** THE COURT: Well, this is a good time. We've kept our
 11:34AM **6** reporter unconscionably long, so why don't we take our morning
 11:34AM **7** break. And if we could please assemble at 20 to 1 ready to go,
 11:34AM **8** I'd appreciate it.
 11:34AM **9** Sir, you're an attorney so you know you're not to discuss
 11:35AM **10** your testimony with anyone during the break.
 11:35AM **11** THE WITNESS: Yes, sir.
 11:35AM **12** THE COURT: Thank you.
 11:35AM **13** (Thereupon, a break was had from 11:35 a.m. until
 11:46AM **14** 11:46 a.m.)
 11:46AM **15** THE COURT: Proceed.
 11:46AM **16** MS. GEORGE: Your Honor, just to update the Court, the DVD
 11:46AM **17** that I wanted to play is another YouTube DVD, so it doesn't play
 11:46AM **18** on the court's DVD. I asked my paralegal to bring my laptop to
 11:46AM **19** court so we can play it for the Court. But at this point in
 11:47AM **20** time, I'll just continue to ask some additional questions, but I
 11:47AM **21** may need to break before the Court takes a lunch, but --
 11:47AM **22** MR. FELDMAN: Well, I would object to any break before
 11:47AM **23** lunch unless the Court orders a break.
 11:47AM **24** THE COURT: Let's proceed.
 11:47AM **25** MS. GEORGE: Your Honor, I have one other housekeeping

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11:47AM **1** matter. Mr. Randy Myers asked for the Court to make arrangements
 11:47AM **2** for his presence. He has been here since we started court this
 11:47AM **3** morning. He wanted to know if the Court would allow him to go to
 11:47AM **4** lunch.
 11:47AM **5** THE COURT: It's now a quarter to 12. I want to go to
 11:47AM **6** 12:45.
 11:47AM **7** MS. GEORGE: So he should remain?
 11:47AM **8** THE COURT: Now, hold on, please. 12:45 to 1:45 will be
 11:47AM **9** our lunch break. As you know, Ms. George, at 1:45 we have two
 11:47AM **10** other matters on the calendar, both detention hearings. I do not
 11:47AM **11** know if they're going to go forward. So if you do, unless you
 11:47AM **12** think you'll reach Mr. Myers before 12:45, he can go to lunch,
 11:47AM **13** but I would appreciate it if he would come back to the courtroom
 11:47AM **14** at 1:45 so at least we could assess where we are at that point.
 11:47AM **15** MR. FELDMAN: In the same vain, because I don't like to
 11:47AM **16** inconvenience anybody, Judge, I am recalling LaChance, I'm going
 11:48AM **17** to call Hodge -- I want to give you my schedule. I want to make
 11:48AM **18** it, you know, so we can be productive here. The order -- you
 11:48AM **19** know, I just want to keep -- if I call the defendant, I'll call
 11:48AM **20** him last. That's my plan, Judge.
 11:48AM **21** THE COURT: So you're going to call Myers, LaChance, and
 11:48AM **22** Hodge and then make your decision on your client?
 11:48AM **23** MR. FELDMAN: Um, I'm not giving you the order.
 11:48AM **24** THE COURT: But you have three witnesses to go?
 11:48AM **25** MR. FELDMAN: Yes, I'm ready to rock, ready to roll for

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11:48AM **1** the rest of the day. That's my whole day. Is that enough,
 11:48AM **2** Judge?
 11:48AM **3** THE COURT: I hope so. It's really a function of those
 11:48AM **4** two detention hearings. So Myers can leave, but he's got to be
 11:48AM **5** back at 1:45.
 11:48AM **6** MR. FELDMAN: How about the cop?
 11:48AM **7** THE COURT: Well, do you think we'll go to 12:45 with this
 11:48AM **8** witness?
 11:48AM **9** MR. FELDMAN: That's up to Ms. George.
 11:48AM **10** MS. GEORGE: Your Honor, I believe so.
 11:48AM **11** THE COURT: Why don't you release everyone until 1:45.
 11:48AM **12** MR. FELDMAN: Ms. Jeanette is kind enough to do that.
 11:49AM **13** THE COURT: Thank you. Please proceed.
 11:49AM **14** BY MS. GEORGE:
 11:49AM **15 Q.** Mr. Pietrangelo, you indicated that you discussed -- let
 11:49AM **16** me just ask this question. The judge asked you a series of
 11:49AM **17** questions about stepping up on the masonry base or the ledge
 11:49AM **18** that you were shown standing on in Government's Exhibit
 11:49AM **19** Number 5. Do you recall those questions that the Court asked
 11:49AM **20** you?
 11:49AM **21 A. This one, yes, ma'am.**
 11:49AM **22 Q.** And you said that you thought that it was better to stand
 11:49AM **23** on the ledge than to be on the sidewalk; isn't that correct?
 11:49AM **24** MR. FELDMAN: Objection. He didn't say better.
 11:49AM **25** THE COURT: When we discussed it, I think he drew a

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11:49AM **1** distinction that there is a difference, as a matter of law, in
 11:49AM **2** his point of view from the sidewalk and the ledge.
 11:49AM **3** MS. GEORGE: Your Honor, I'm asking some foundational
 11:49AM **4** questions, so if I could be given some leeway.
 11:49AM **5** THE COURT: But he didn't say it was better, he said, in
 11:49AM **6** response to my question, he said that the ledge is not the
 11:49AM **7** sidewalk.
 11:49AM **8** BY MS. GEORGE:
 11:49AM **9 Q.** So you thought the ledge was not the sidewalk; isn't that
 11:49AM **10** correct?
 11:49AM **11 A. Well, I knew that. I knew that.**
 11:50AM **12 Q.** You knew that the ledge was not the sidewalk; isn't that
 11:50AM **13** correct?
 11:50AM **14 A. Yes, ma'am.**
 11:50AM **15 Q.** And how did you figure that out?
 11:50AM **16 A. Well --**
 11:50AM **17** MR. FELDMAN: Objection. Common meaning, dictionary.
 11:50AM **18** THE COURT: No, no. You drew a legal distinction in
 11:50AM **19** response to my question, which is being on the sidewalk and being
 11:50AM **20** on the ledge; isn't that right?
 11:50AM **21** THE WITNESS: Yes, sir.
 11:50AM **22** THE COURT: Could you explain to Ms. George how you came
 11:50AM **23** to draw that distinction?
 11:50AM **24** THE WITNESS: I believe I researched the issue.
 11:50AM **25** BY MS. GEORGE:

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11:50AM **1 Q.** And what did you find that helped you draw that
 11:50AM **2** distinction?
 11:50AM **3 A.** **The regulations.**
 11:50AM **4 Q.** Which regulations?
 11:50AM **5 A.** **7.96.**
 11:50AM **6 Q.** And do you mean to say 36 Code of Federal Regulations
 11:50AM **7** 7.96?
 11:50AM **8 A.** **Yes, ma'am.**
 11:50AM **9 Q.** Did you read the entire regulation?
 11:50AM **10 A.** **I recall that I read it sufficiently to form an opinion.**
 11:50AM **11 Q.** So did you read all of the subsections of the regulation?
 11:50AM **12 A.** **I don't have a recollection of that, ma'am.**
 11:50AM **13 Q.** But you read enough to conclude that the ledge was not
 11:51AM **14** the sidewalk?
 11:51AM **15 A.** **For purposes of that regulation, yes, ma'am.**
 11:51AM **16 Q.** So you read the definition in 36 CFR 7.6 [sic] which
 11:51AM **17** defines the --
 11:51AM **18** THE COURT REPORTER: I'm sorry, say that again.
 11:51AM **19** MS. GEORGE: 36 CFR 7.96.
 11:51AM **20** BY MS. GEORGE:
 11:51AM **21 Q.** So you read the definition in 36 CFR 7.96 that defines
 11:51AM **22** the White House sidewalk; isn't that correct?
 11:51AM **23 A.** **Again, I don't recall what specific subsections of the**
 11:51AM **24** **regulation I read. I recall reading it.**
 11:51AM **25 Q.** Okay. If you saw the regulation, would that refresh your
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11:51AM **1** recollection as to what section you read?
 11:51AM **2 A.** **No.**
 11:51AM **3 Q.** Not at all?
 11:51AM **4 A.** **That was months -- that's more than a year ago.**
 11:51AM **5** MS. GEORGE: Your Honor, at this time I mark for
 11:51AM **6** identification purposes Government's Exhibit 44, which the Court
 11:51AM **7** has already taken judicial notice of, and ask that it be entered
 11:51AM **8** into evidence at this time, 36 Section 7.96.
 11:51AM **9** THE COURT: I'll take judicial notice of it.
 11:51AM **10** MR. FELDMAN: Judge, it's the law. I don't think --
 11:51AM **11** THE COURT: That's all right. It's just a matter of
 11:52AM **12** convenience for me to see it. That's what she wants.
 11:52AM **13** MS. GEORGE: That's correct.
 11:52AM **14** THE COURT: Thank you.
 11:52AM **15** BY MS. GEORGE:
 11:52AM **16 Q.** And in reading the regulation, did you also consider
 11:52AM **17** whether you needed a permit to conduct your demonstration or
 11:52AM **18** protest on the White House sidewalk?
 11:52AM **19 A.** **I don't recall.**
 11:52AM **20 Q.** So you went there regardless of whether you needed a
 11:52AM **21** permit?
 11:52AM **22** MR. FELDMAN: Objection. That's not what he said.
 11:52AM **23** MS. GEORGE: I'm asking a different question.
 11:52AM **24** MR. FELDMAN: He said he didn't recall reading it.
 11:52AM **25** THE COURT: There's a missing question. Did you read the
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11:52AM **1** portion of the regulation that pertains to permits, that you
 11:52AM **2** recall?
 11:52AM **3** THE WITNESS: I believe I read everything that I could
 11:52AM **4** gather pertaining to the issue, Your Honor.
 11:52AM **5** THE COURT: I think a fairer question was, did you
 11:52AM **6** consider at any time prior to doing what you did whether you
 11:53AM **7** should get a permit under a regulation?
 11:53AM **8** THE WITNESS: I don't have an independent recollection,
 11:53AM **9** Your Honor. I do recall that there was nothing that gave an
 11:53AM **10** indication to me that we would be doing anything illegal.
 11:53AM **11** THE COURT: Thank you.
 11:53AM **12** BY MS. GEORGE:
 11:53AM **13 Q.** But you did read enough to make a legal determination to
 11:53AM **14** determine you should be on the ledge versus actually on the
 11:53AM **15** sidewalk; isn't that correct?
 11:53AM **16 A.** **Without -- I read enough to know that we would be legally**
 11:53AM **17** **safe on the pedestal.**
 11:53AM **18** MS. GEORGE: Court's indulgence.
 11:53AM **19** BY MS. GEORGE:
 11:53AM **20 Q.** And earlier in your testimony you described defendant
 11:53AM **21** Choi as the leader of the group; isn't that correct?
 11:54AM **22 A.** **Yes.**
 11:54AM **23 Q.** And as the leader, what type of role did he take in
 11:54AM **24** reference to the group? What did he do as the leader?
 11:54AM **25 A.** **Are we still talking about the March 18th?**
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11:54AM **1 Q.** We're talking about his role with your group. You
 11:54AM **2** described him as being the leader. My question is, what types
 11:54AM **3** of things did he do as the leader of the group?
 11:54AM **4 A.** **I just wanted to clarify. Are we talking about**
 11:54AM **5** **throughout the whole period of 2010, or are we talking about**
 11:54AM **6** **March 17th, or are you talking about the November action?**
 11:54AM **7 Q.** No. Let's go back. In your earlier testimony on direct
 11:54AM **8** examination, you explained that you got together in a group with
 11:54AM **9** Mr. Choi and he was the leader when you all met and became the
 11:54AM **10** freedom fighters, as you described it.
 11:54AM **11 A.** **I'm sorry. I'm not deliberately trying to offend you,**
 11:54AM **12** **but when you say "group," I thought that was referring to the**
 11:54AM **13** **November 18th -- the November 15th --**
 11:55AM **14 Q.** No, I'm not talking about the November 15 --
 11:55AM **15** MR. FELDMAN: Judge, she's cutting him off.
 11:55AM **16** THE COURT: That's okay. I think he understands. Go
 11:55AM **17** ahead.
 11:55AM **18** BY MS. GEORGE:
 11:55AM **19 Q.** I'm talking about when you described in your testimony
 11:55AM **20** that you all had a group and you referred to it as the freedom
 11:55AM **21** fighters.
 11:55AM **22 A.** **His leadership role, his actions consisted of, during any**
 11:55AM **23** **period we're talking about, of formulating, originating ideas,**
 11:55AM **24** **of providing the gravitas and the character and the courage to**
 11:55AM **25** **do this stuff, of persuading people -- I hesitate to compare**
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11:55AM	1	this because Dan himself rejects this, but he was the leader	
11:55AM	2	like Martin Luther King, Jr. was a leader; not necessarily	
11:55AM	3	identical, but he was the person who people followed.	
11:55AM	4	Q. So he motivated to follow him in his cause?	
11:56AM	5	A. Yes, that was part of it.	
11:56AM	6	Q. And he inspired people to be committed to his cause?	
11:56AM	7	A. Yes, definitely.	
11:56AM	8	Q. And when you all went to the with White House fence on	
11:56AM	9	March 18th, there were people with you; isn't that correct,	
11:56AM	10	connected to the cause?	
11:56AM	11	MR. FELDMAN: Objection, objection. Again, maybe it's my	
11:56AM	12	ignorance of the local bylaws. I thought "y'all" meant more than	
11:56AM	13	two.	
11:56AM	14	MS. GEORGE: It does.	
11:56AM	15	MR. FELDMAN: Then I object.	
11:56AM	16	MS. GEORGE: He testified earlier --	
11:56AM	17	THE COURT: This morning, the clerk was talking to one man	
11:56AM	18	and he said "y'all going to the Red Skins game?" So here, y'all	
11:56AM	19	can be one or two people. With that little explanation of the	
11:56AM	20	linguistics of D.C., let us proceed.	
11:56AM	21	BY MS. GEORGE:	
11:56AM	22	Q. Did y'all go to the White House fence?	
11:56AM	23	A. On March 18th, Dan and myself and Robin McGehee and other	
11:56AM	24	individuals went to Pennsylvania Avenue. It was just Dan and	
11:56AM	25	myself who got on the fence pedestal.	
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11:57AM	1	Q. We'll get back to the March 19th interview with the media	
11:57AM	2	following Superior Court later, but let's move to April 20th,	
11:57AM	3	2010. Did you and Mr. Choi return to the White House fence on	
11:57AM	4	April 20th, 2010?	
11:57AM	5	A. Yes, ma'am.	
11:57AM	6	Q. And you, along with Mr. Choi, on April 20th, 2010 and	
11:57AM	7	others handcuffed yourselves to the White House fence; isn't	
11:57AM	8	that correct?	
11:57AM	9	A. Yes, ma'am.	
11:57AM	10	Q. And once again, after you handcuffed yourself to the	
11:57AM	11	White House fence, the Park Police showed up; isn't that	
11:57AM	12	correct?	
11:57AM	13	A. Some were already present, others showed up, yes, ma'am.	
11:57AM	14	Q. The Park Police, not others, but the Park Police?	
11:57AM	15	A. Well, there were Park Police, I believe, in the street	
11:57AM	16	when we arrived. And then after we handcuffed, other officers	
11:58AM	17	arrived, some Park Police, other Secret Service. I'm not	
11:58AM	18	sure -- I don't recall the sort of -- the uniforms. I know	
11:58AM	19	there was a mix. I think there was S.W.A.T., Park Police	
11:58AM	20	S.W.A.T. -- I think there was Park Police, I think there was	
11:58AM	21	maybe Secret Service. I don't recall exactly on that point.	
11:58AM	22	Q. But several police officers showed up to the White House	
11:58AM	23	fence after you arrived there, correct?	
11:58AM	24	A. Yes, ma'am.	
11:58AM	25	Q. And at that point in time, the police once again put up	
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11:58AM	1	the yellow tape forming a perimeter around the area where you	
11:58AM	2	were handcuffed to the White House fence?	
11:58AM	3	A. At some point after we handcuffed, yes, ma'am, they	
11:58AM	4	closed off not only the street but Lafayette Park as well.	
11:58AM	5	Q. And once again, the police gave you three warnings to	
11:58AM	6	leave the area; isn't that correct?	
11:58AM	7	A. Again, ma'am, no, I have no rec -- you have to understand	
11:58AM	8	what it's like to be -- with respect to being on the fence of --	
11:59AM	9	Q. Do you recall?	
11:59AM	10	MR. FELDMAN: Objection, objection. She's cutting him	
11:59AM	11	off.	
11:59AM	12	THE COURT: Please let him finish. Please finish the	
11:59AM	13	sentence. You said you don't know what it's like to be on the	
11:59AM	14	fence. What were you about to say?	
11:59AM	15	THE WITNESS: Yes, sir. Ma'am, it's not like you're in a	
11:59AM	16	classroom sort of passively listening to a speaker. You are in	
11:59AM	17	harm -- we're not in the war zone, but you're in harm's way. You	
11:59AM	18	are speaking to the president of the United States and demanding	
11:59AM	19	equality, and you have police all around you and you have crowds	
11:59AM	20	all around and activity and it -- it's -- you're in a zone. It's	
11:59AM	21	really hard to describe, but you're in a zone.	
11:59AM	22	BY MS. GEORGE:	
11:59AM	23	Q. In fact, on March 18th you weren't saying anything, were	
11:59AM	24	you?	
11:59AM	25	A. March 18th or April 20th?	
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11:59AM	1	Q. March 18th. You weren't saying anything on March 18th,	
11:59AM	2	were you?	
11:59AM	3	MR. FELDMAN: Objection. We went over that. We went over	
11:59AM	4	that and he -- what his speech meant, okay. When you say "say	
11:59AM	5	anything," speech conduct is speech. I'm a little startled.	
11:59AM	6	THE COURT: We got the distinction. Fine. Did you utter	
12:00PM	7	words?	
12:00PM	8	THE WITNESS: Yes, Your Honor. Not a lot, but we did.	
12:00PM	9	BY MS. GEORGE:	
12:00PM	10	Q. On March 18th?	
12:00PM	11	A. Yes, ma'am. I recall -- I thought I said, "MLK, Jr.	
12:00PM	12	would be ashamed of the government," or something like that, but	
12:00PM	13	also the expressive conduct -- this is the part about the	
12:00PM	14	handcuffs, that's why it was such a necessary pop, was that	
12:00PM	15	they --	
12:00PM	16	MS. GEORGE: Objection. Non-responsive. I didn't ask	
12:00PM	17	about conduct.	
12:00PM	18	MR. FELDMAN: Conduct is -- she doesn't get it.	
12:00PM	19	THE COURT: All right. Why don't you let me rule. He's	
12:00PM	20	expressing himself. Let's see what he has to say. You were	
12:00PM	21	talking about handcuffs and you used the words "expressive	
12:00PM	22	conduct" when you heard the word objection. Please continue.	
12:00PM	23	THE WITNESS: The handcuffs symbolized the inequality, the	
12:00PM	24	second class citizenship. That's why they were so necessary as a	
12:00PM	25	prop to the speech, and I -- and in terms of uttering things, Dan	
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12:00PM	1	did say some things from the fence, and I think -- I thought I
12:00PM	2	said one thing pertaining to Martin Luther King, Jr. I know I
12:01PM	3	didn't speak very much myself. That's it.
12:01PM	4	BY MS. GEORGE:
12:01PM	5 Q.	So you recall what you specifically said, but on April
12:01PM	6	20th you don't recall whether the police gave any warnings or
12:01PM	7	not?
12:01PM	8 A.	I recall generally what I said at that one point on March
12:01PM	9	18th, and as far as the warnings, like you said, I don't recall
12:01PM	10	hearing the warnings. I was in that zone. You just have to be
12:01PM	11	up on the pedestal. The police are not, you know -- they're not
12:01PM	12	up on the pedestal with you talking to you. I heard
12:01PM	13	amplification from the car, but I don't recall what was said. I
12:01PM	14	don't even recall if I heard what was said.
12:01PM	15 Q.	So you do recall going to the White House on April
12:01PM	16	20th --
12:01PM	17	MR. FELDMAN: Asked and answered. That's the third time.
12:01PM	18	THE COURT: Okay. She's -- I think she's laying a
12:01PM	19	foundation. Go ahead.
12:01PM	20	THE WITNESS: Yes, ma'am, I do.
12:01PM	21	BY MS. GEORGE:
12:01PM	22 Q.	And after the police officer gave the warnings, you
12:02PM	23	recall getting arrested; isn't that correct?
12:02PM	24	THE COURT: On April 20th?
12:02PM	25	MS. GEORGE: Yes.
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12:02PM	1	THE WITNESS: I recall getting arrested at some point,
12:02PM	2	yes, ma'am.
12:02PM	3	BY MS. GEORGE:
12:02PM	4 Q.	And that was your intention, to be arrested to bring
12:02PM	5	attention to your cause; isn't that correct?
12:02PM	6	MR. FELDMAN: Objection. That was asked and answered.
12:02PM	7	THE COURT: Not as to April 20th.
12:02PM	8	MR. FELDMAN: Oh, I'm sorry.
12:02PM	9	THE WITNESS: No, ma'am. Again, our intention was to
12:02PM	10	engage in protected speech and to do it lawfully, and we
12:02PM	11	understood that we might be arrested for that because -- not
12:02PM	12	because we were doing something illegal, but because we were
12:02PM	13	speaking out for equality for gay people, and that was not
12:02PM	14	something that the government -- the government was enforcing
12:02PM	15	discrimination. We were in front of the White House telling the
12:02PM	16	president of the United States, stop discriminating, and Barack
12:02PM	17	Obama, with all due respect to President Obama, that was not
12:02PM	18	something that he wanted to hear.
12:02PM	19	BY MS. GEORGE:
12:02PM	20 Q.	So you were willing to accept the consequence of getting
12:02PM	21	arrested?
12:02PM	22 A.	We were willing to accept whatever -- we were willing to
12:02PM	23	suffer at that moment whatever consequences. That doesn't mean
12:03PM	24	that we accepted it legally or agreed with them.
12:03PM	25 Q.	I didn't ask you about that.
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12:03PM	1	MR. FELDMAN: Again she's cutting him off. Objection.
12:03PM	2	THE COURT: Did you finish your sentence?
12:03PM	3	THE WITNESS: I just wanted to explain, Your Honor, that
12:03PM	4	there's a difference between sort of -- it's like the soldier
12:03PM	5	going under fire. You're willing to risk that, but that doesn't
12:03PM	6	mean when you're shot and wounded that you said, Thank you,
12:03PM	7	Mr. Enemy, what you did I accept. And no, that's -- that's not
12:03PM	8	what happened.
12:03PM	9	BY MS. GEORGE:
12:03PM	10 Q.	You were willing to accept the consequences of being
12:03PM	11	arrested; isn't that correct, Mr. Pietrangelo?
12:03PM	12	MR. FELDMAN: Asked and answered.
12:03PM	13	MS. GEORGE: He hasn't answered the question, Your Honor.
12:03PM	14	MR. FELDMAN: Three times.
12:03PM	15	THE COURT: You, in your dialogue with me, you indicated
12:03PM	16	to me -- I don't know what we were -- the time we were talking
12:03PM	17	about was probably March or April. You appreciated that one of
12:03PM	18	the consequences of your behavior would be being arrested. Did
12:03PM	19	you appreciate that?
12:03PM	20	MR. FELDMAN: He said "could." Please don't put words in
12:04PM	21	his mouth. With all due respect, he said "could." There's a big
12:04PM	22	difference.
12:04PM	23	THE WITNESS: Yes, Your Honor, we understood that by our
12:04PM	24	actions others might take counteraction, so to speak.
12:04PM	25	THE COURT: And one of those counteractions might be your
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12:04PM	1	arrest by the United States Park Police or anyone else?
12:04PM	2	THE WITNESS: Yes, Your Honor.
12:04PM	3	THE COURT: Thank you.
12:04PM	4	MS. GEORGE: And when you say "we," you're including
12:04PM	5	Mr. Choi; isn't that correct?
12:04PM	6	THE WITNESS: Yes, ma'am.
12:04PM	7	MS. GEORGE: Your Honor, I have what's been marked as
12:04PM	8	Government's Exhibit 46 and previously provided to defense
12:04PM	9	counsel. It is a videotape of the portion of the events on April
12:04PM	10	20th, 2010 at the White House sidewalk.
12:04PM	11	THE COURT: Thank you.
12:04PM	12	MS. GEORGE: Do you have any objection?
12:04PM	13	MR. FELDMAN: Could I have a moment, please, to confer
12:04PM	14	with my colleague?
12:04PM	15	THE COURT: Sure.
12:04PM	16	(Discussion had off the record between counsel and
12:04PM	17	defendant.)
12:04PM	18	MR. FELDMAN: Judge, at this point -- again, I apologize
12:04PM	19	to the Court. We request to view it again out of camera.
12:05PM	20	THE COURT: All right. Go ahead. I'll be --
12:05PM	21	MR. FELDMAN: Thank you, Judge.
12:05PM	22	(Thereupon, a break was had from 12:05 p.m. until
12:08PM	23	12:08 p.m.)
12:08PM	24	MR. FELDMAN: Thank you, Your Honor.
12:08PM	25	THE COURT: What are we watching now?
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12:08PM **1** MS. GEORGE: You were -- this is the Government's Exhibit

12:08PM **2** 46, and Mr. Feldman, I believe, is consenting to the admission

12:08PM **3** into evidence.

12:08PM **4** MR. FELDMAN: That's correct, Your Honor.

12:08PM **5** THE COURT: Thank you.

12:08PM **6** (Government's Exhibit 46 admitted into the record.)

12:08PM **7** THE COURT: Please play.

12:08PM **8** MS. GEORGE: And, Your Honor, I would like to place on the

12:08PM **9** record that the government provided the radio run traffic for

12:08PM **10** March 18th, 2010 and April 20th, 2010 to Mr. Feldman's paralegal,

12:08PM **11** Ms. DiBona, probably about four or five days ago.

12:08PM **12** MR. FELDMAN: That's correct, Your Honor.

12:08PM **13** THE COURT: Thank you.

12:09PM **14** (Videotape played.)

12:09PM **15** BY MS. GEORGE:

12:10PM **16** Q. Mr. Pietrangelo, I'm going to pause this Exhibit 46.

12:10PM **17** That's a frame of you with five other individuals handcuffed to

12:11PM **18** the White House fence; isn't that correct?

12:11PM **19** A. **Yes, ma'am.**

12:11PM **20** Q. And as you look at the frame shown to you on the computer

12:11PM **21** at the witness stand, you are the fourth person in from the

12:11PM **22** left; isn't that correct?

12:11PM **23** A. **Yes, ma'am.**

12:11PM **24** Q. And you have on a black beret; isn't that correct?

12:11PM **25** A. **Yes, ma'am.**

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12:11PM **1** Q. And as you look at the frame on your screen, Mr. Choi is

12:11PM **2** the second person from the left; isn't that correct?

12:11PM **3** A. **Yes, ma'am.**

12:11PM **4** (Videotape played.)

12:11PM **5** BY MS. GEORGE:

12:11PM **6** Q. So on this tape, April 20th, 2010, do you have one or two

12:11PM **7** hands handcuffed to the fence?

12:11PM **8** A. **I believe it was both hands, ma'am.**

12:11PM **9** Q. You had both of your hands handcuffed to the fence?

12:12PM **10** A. **Yes, ma'am.**

12:12PM **11** Q. And did you assist any other individuals with being

12:12PM **12** handcuffed to the fence that are shown in this frame?

12:12PM **13** A. **Not that I recall, ma'am.**

12:12PM **14** Q. So do you know how they got handcuffed to the fence?

12:12PM **15** A. **I wasn't watching them. I can only assume.**

12:12PM **16** Q. But the police officers didn't handcuff you to the fence?

12:12PM **17** A. **Not that I know of, no, ma'am. I think it was by the**

12:12PM **18** **individuals.**

12:12PM **19** Q. And when you say "individuals," you mean the individuals

12:12PM **20** with you on the ledge connected to the fence in this frame; is

12:12PM **21** that correct?

12:12PM **22** A. **Yes, ma'am.**

12:12PM **23** (Videotape played.)

12:12PM **24** BY MS. GEORGE:

12:12PM **25** Q. Now this occurred approximately a little over a month on

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12:12PM **1** March 18th; isn't that correct?

12:12PM **2** MR. FELDMAN: From.

12:12PM **3** THE WITNESS: Yes, ma'am.

12:12PM **4** MS. GEORGE: A little over a month from March 18th. I

12:12PM **5** stand corrected.

12:12PM **6** A. **Yes, ma'am.**

12:12PM **7** BY MS. GEORGE:

12:12PM **8** Q. And did you meet with Mr. Choi between March 18th and

12:13PM **9** April 20th, 2010?

12:13PM **10** A. **Yes, ma'am.**

12:13PM **11** Q. And how many times did you all meet to plan the April

12:13PM **12** 20th, 2010 event?

12:13PM **13** A. **I don't recall the exact number of days. I remember -- I**

12:13PM **14** **think it was at least -- I know it was definitely one, and I**

12:13PM **15** **think it was as many as three, if not more than that.**

12:13PM **16** Q. And did Mr. Choi assume his same role that you described

12:13PM **17** previously, to motivate others to join him in handcuffing at the

12:13PM **18** White House fence on the 20th of April?

12:13PM **19** A. **Yes, ma'am.**

12:13PM **20** Q. Did he also in those meetings say how you all were going

12:13PM **21** to handcuff yourselves to the White House fence, two hands

12:13PM **22** versus one hand?

12:13PM **23** A. **I think it was just we showed each individual how to**

12:13PM **24** **handcuff, and I don't recall if it was specified, handcuff both**

12:13PM **25** **hands or one hand, but it was handcuffing.**

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12:14PM **1** Q. And when you say "we showed," who were you referring to?

12:14PM **2** A. **Dan and myself.**

12:14PM **3** Q. So Dan showed -- the same frame is still shown on your

12:14PM **4** screen; is that correct, that we talked about earlier?

12:14PM **5** A. **Yes, ma'am.**

12:14PM **6** Q. So Dan showed which one of these individuals how to

12:14PM **7** handcuff themselves?

12:14PM **8** A. **I don't recall which individual either one of us**

12:14PM **9** **instructed. It was a group instruction, a group rehearsal.**

12:14PM **10** **All --**

12:14PM **11** Q. And at that time -- I'm sorry, finish.

12:14PM **12** A. **Excuse me. All -- let's see. One, two, three, four, all**

12:14PM **13** **four of the others were present, if I recall correctly, when we**

12:14PM **14** **did the rehearsal and demonstrated to them how we did it the**

12:14PM **15** **first time.**

12:14PM **16** Q. So, in these three meetings, did you rehearse handcuffing

12:14PM **17** every time?

12:14PM **18** A. **I think it was just the one time the one day.**

12:14PM **19** Q. Just one day?

12:14PM **20** A. **Yes, ma'am.**

12:14PM **21** Q. And was that meeting closest to the day of the event?

12:14PM **22** A. **I believe so, yes, ma'am.**

12:15PM **23** Q. And how long was that meeting?

12:15PM **24** A. **I'd say certainly longer than -- approximately a half an**

12:15PM **25** **hour. It could have been longer.**

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12:15PM **1 Q.** And did these individuals receive instructions from

12:15PM **2** Mr. Choi not to unhandcuff themselves from the fence?

12:15PM **3 A.** **This -- I think we had the same intent as the first time,**

12:15PM **4** **which is to say our peace. That was the intent, was to**

12:15PM **5** **complete. We would decide when we were done.**

12:15PM **6 Q.** So, correct me if I'm wrong, to stay handcuffed to the

12:15PM **7** fence as long as you could until you were ready to leave?

12:15PM **8 A.** **Until we had finished speaking, yes, ma'am.**

12:15PM **9 Q.** And if that meant that the police officers had to come in

12:15PM **10** and unhandcuff you and the other individuals themselves, then

12:15PM **11** you were willing to have that consequence happen?

12:15PM **12 A.** **Again, our intent was to say our -- we were engaging in**

12:16PM **13** **protected speech, and we knew that the police might react that**

12:16PM **14** **way, but since we were engaging in lawful, protected speech, we**

12:16PM **15** **were safe in terms of the law. We knew they might react that**

12:16PM **16** **way. I'm not sure what else -- what you're looking for in your**

12:16PM **17** **question.**

12:16PM **18 Q.** That's fine. And as a lawyer, you fully appreciate that

12:16PM **19** some other lawyer might have a different interpretation of your

12:16PM **20** perspective of the law in reference to the ledge there, correct?

12:16PM **21 A.** **Well, there are some lawyers who, you know -- sure,**

12:16PM **22** **that's true of any situation. There are -- during World War II,**

12:16PM **23** **Nazi lawyers -- they approved genocide. So, I mean, just**

12:17PM **24** **because one lawyer says it's lawful, what we did was lawful, I**

12:17PM **25** **mean -- I don't know what else to tell you.**

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12:17PM **1 Q.** So you appreciated, you and Mr. Choi appreciated that

12:17PM **2** some lawyer could disagree with your interpretation of the law

12:17PM **3** and say standing on the ledge was unlawful?

12:17PM **4** MR. FELDMAN: Objection. He's only competent to

12:17PM **5** testify as to --

12:17PM **6** THE COURT: I think that's fair. Forget about them.

12:17PM **7** Restricting that question to yourself, how would you answer? Do

12:17PM **8** you want it repeated?

12:17PM **9** THE WITNESS: Yes, Your Honor.

12:17PM **10** THE COURT: Please repeat it, Mr. Wallace.

12:17PM **11** THE WITNESS: I'm sorry. I don't need it repeated. Your

12:17PM **12** Honor, as a lawyer, I understand that we have sort of a system of

12:17PM **13** jurisprudence which at the top of which is the Supreme Court

12:17PM **14** which has spoken repeatedly on the First Amendment, and I

12:17PM **15** don't -- I think any reasonable lawyer looking at that First

12:17PM **16** Amendment jurisprudence would come to the conclusion that we were

12:17PM **17** acting lawfully and in protected speech. So what some other

12:17PM **18** attorney might say, I have no control over, but a reasonable

12:18PM **19** attorney would come to that same conclusion.

12:18PM **20** THE COURT: Thank you very much.

12:18PM **21** BY MS. GEORGE:

12:18PM **22 Q.** So you acknowledge that a lawyer could disagree with your

12:18PM **23** interpretation?

12:18PM **24** MR. FELDMAN: Asked and answered. He said --

12:18PM **25** THE COURT: I think that's fair.

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12:18PM **1** MR. FELDMAN: -- many lawyers might --

12:18PM **2** THE COURT: I think that's true. He's made his point.

12:18PM **3** BY MS. GEORGE:

12:18PM **4 Q.** And in reference to that subject, did Mr. Choi

12:18PM **5** participate in a discussion with you about that fact, that

12:18PM **6** someone could disagree with you, your interpretation of the law?

12:18PM **7 A.** **I don't think I even -- I never came to that conclusion.**

12:18PM **8** **It was never an issue. It was never discussed. We were -- the**

12:18PM **9** **issue was we were lawfully engaging -- we were going to lawfully**

12:18PM **10** **engage in protected speech.**

12:18PM **11 Q.** So did you discuss that you could be arrested?

12:18PM **12** MR. FELDMAN: Judge, how many times are you going to beat

12:18PM **13** it?

12:18PM **14** THE COURT: All right. At this point, when you're having

12:18PM **15** the discussion between March 18th and April 20th, was there a

12:18PM **16** discussion between yourself and this defendant about the

12:18PM **17** possibility that you would be arrested, that you recall?

12:19PM **18** THE WITNESS: Yes, sir, as I testified before, that that

12:19PM **19** was a possible outcome.

12:19PM **20** THE COURT: Thank you.

12:19PM **21** (Videotape played.)

12:22PM **22** BY MS. GEORGE:

12:22PM **23 Q.** In this frame, that's you, Mr. Pietrangelo, isn't it?

12:22PM **24 A.** **Yes, ma'am.**

12:22PM **25 Q.** And before the government paused this exhibit,

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12:22PM **1** Government's Exhibit 46, there wasn't any noise at that point in

12:23PM **2** time, was there?

12:23PM **3 A.** **Could you repeat the question, please?**

12:23PM **4 Q.** There wasn't any noise, external noise at that point in

12:23PM **5** time, was there?

12:23PM **6 A.** **Again, I was in a zone, and I don't think there was a**

12:23PM **7** **total absence of noise, as I recall. There was ambient noise.**

12:23PM **8 Q.** So you do recall hearing something?

12:23PM **9 A.** **I recall the feeling of being in the zone, that there was**

12:23PM **10** **noise happening around me as if -- I think in both videos you**

12:23PM **11** **showed me, if you look at my face, you could see that I'm -- I'm**

12:23PM **12** **concentrating on conducting the expressive speech, the**

12:23PM **13** **discipline remaining lawful, remaining nonviolent. That's what**

12:23PM **14** **I remember, being in that zone with the ambient noise, the**

12:23PM **15** **crowd, the police, the people next to me. That's what I**

12:23PM **16** **remember.**

12:23PM **17 Q.** Okay. So if the police had said, We have a bomb, you

12:24PM **18** need to leave this area now, you wouldn't have heard that?

12:24PM **19** MR. FELDMAN: Objection.

12:24PM **20** THE COURT: Sustained.

12:24PM **21** BY MS. GEORGE:

12:24PM **22 Q.** Are you indicating that you could not hear anything else

12:24PM **23** other than what you just said, ambient noise and the crowd

12:24PM **24** noise?

12:24PM **25** MR. FELDMAN: Judge, he just answered that. Do you want

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12:24PM	1	him to answer it again, Your Honor?
12:24PM	2	THE COURT: Let me see if I understand. When you say
12:24PM	3	"ambient noise," could you be a little more specific as to what
12:24PM	4	you mean? What is ambient? This courtroom, for example you
12:24PM	5	would say right now there's no ambient noise, right?
12:24PM	6	THE WITNESS: No, I can hear --
12:24PM	7	THE COURT: So the clicking of the court reporter, his
12:24PM	8	keys and so forth?
12:24PM	9	THE WITNESS: Again, the --
12:24PM	10	MR. FELDMAN: Again, with all due respect, sir, let him
12:24PM	11	finish, please.
12:24PM	12	THE COURT: He had.
12:24PM	13	MR. FELDMAN: With all due respect.
12:24PM	14	THE COURT: You don't have to pray. That's all right.
12:24PM	15	Were you finished?
12:24PM	16	THE WITNESS: I thought I heard sort of the blowing of
12:24PM	17	something.
12:24PM	18	THE COURT: Okay. That's the kind of noise. I guess what
12:25PM	19	I find remarkable about this is that there's no chanting. This
12:25PM	20	is decidedly a demonstration in silence, is it not? It's
12:25PM	21	designed to be that way, right?
12:25PM	22	THE WITNESS: Your Honor, I don't recall -- I think there
12:25PM	23	may have been parts where there was -- it was not silent, but for
12:25PM	24	a long part of it, it was silent. We were silent, Your Honor.
12:25PM	25	THE COURT: You were silent. And is it fair to say that
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12:25PM	1	you were -- you chose that particular spot because of the tableau
12:25PM	2	of the five military people right at the portico of the White
12:25PM	3	House? That was the expression or thought you were conveying?
12:25PM	4	THE WITNESS: Yes, Your Honor, with the White House in the
12:25PM	5	background, the tableau, as you said, Your Honor.
12:25PM	6	THE COURT: Thank you.
12:25PM	7	BY MS. GEORGE:
12:25PM	8	A. And so --
12:25PM	9	Q. There's no question pending at this time. So it's fairly
12:25PM	10	quiet, as the Court had you acknowledge, correct?
12:26PM	11	MR. FELDMAN: Judge, at what point?
12:26PM	12	MS. GEORGE: At the point that's shown on the video.
12:26PM	13	THE COURT: Where it's stopped, you're not chanting and no
12:26PM	14	one else is chanting?
12:26PM	15	THE WITNESS: Yes, Your Honor. Ma'am, the six individuals
12:26PM	16	at this point are not verbalizing any sound.
12:26PM	17	BY MS. GEORGE:
12:26PM	18	Q. And in fact, no one was chanting when the first warning
12:26PM	19	was given; isn't that correct?
12:26PM	20	A. If I -- that's correct, Your Honor -- Ma'am, that's
12:26PM	21	correct.
12:26PM	22	(Videotape played.)
12:29PM	23	BY MS. GEORGE:
12:29PM	24	Q. So, Mr. Pietrangelo, in this frame you and the other five
12:29PM	25	people are all handcuffed to the fence, correct?
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12:29PM	1	A. Yes, ma'am.
12:29PM	2	Q. Now, after the -- you were handcuffed on March 18th;
12:30PM	3	isn't that correct, 2010? You were handcuffed to the White
12:30PM	4	House fence on March 18th, 2010; isn't that correct?
12:30PM	5	A. That's correct.
12:30PM	6	Q. And did you get your handcuffs back after they were
12:30PM	7	disconnected by the Park Police on March 18th, 2010?
12:30PM	8	A. No, ma'am.
12:30PM	9	Q. So did you purchase new handcuffs?
12:30PM	10	A. I did not, no, ma'am.
12:30PM	11	Q. Did Dan Choi purchase new handcuffs?
12:30PM	12	MR. FELDMAN: Objection. If he knows.
12:30PM	13	THE WITNESS: I don't know who purchased the handcuffs.
12:30PM	14	BY MS. GEORGE:
12:30PM	15	Q. How did you receive the new handcuffs?
12:30PM	16	A. Someone had them at the house where we were meeting, and
12:30PM	17	I got a set.
12:30PM	18	Q. Okay. And that's the meeting we were talking about
12:30PM	19	earlier where you and Mr. Choi were showing the other
12:30PM	20	individuals how to use and put on handcuffs; is that correct?
12:30PM	21	A. Yes, ma'am.
12:30PM	22	Q. So did Mr. Choi take a leadership role in reference to
12:30PM	23	the handcuffs, meaning did he tell someone to purchase the
12:30PM	24	handcuffs?
12:30PM	25	MR. FELDMAN: Objection.
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12:30PM	1	THE COURT: In your presence, did you hear Mr. Choi tell
12:31PM	2	anyone to buy handcuffs?
12:31PM	3	THE WITNESS: Not that I recall, ma'am -- sir, Your Honor.
12:31PM	4	THE COURT: That's okay.
12:31PM	5	BY MS. GEORGE:
12:31PM	6	Q. But at that meeting, someone arrived with the handcuffs?
12:31PM	7	MR. FELDMAN: Asked and answered.
12:31PM	8	THE COURT: I think we can take that as a given. Suddenly
12:31PM	9	these handcuffs appeared. Where did they come from? They were
12:31PM	10	just --
12:31PM	11	THE WITNESS: They were there, Your Honor.
12:31PM	12	THE COURT: That's all you know? Let's proceed.
12:31PM	13	BY MS. GEORGE:
12:31PM	14	Q. And the individuals shown in the frame now, were you at
12:31PM	15	one of these individual's home?
12:31PM	16	A. No, ma'am.
12:31PM	17	Q. No. Someone else's house?
12:31PM	18	A. Yes, ma'am.
12:31PM	19	Q. Who was related to your cause but not necessarily going
12:31PM	20	to handcuff themselves to the White House fence?
12:31PM	21	A. They were activists, gay activists, gay rights activists
12:31PM	22	who were not -- who did not handcuff themselves to the fence.
12:31PM	23	Q. So, Mr. Choi and yourself were working with other
12:31PM	24	individuals that were supplying the handcuffs to you so you
12:32PM	25	could handcuff yourself to the fence?
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12:32PM	1	MR. FELDMAN: Objection. Form, relevance, and -- if she
12:32PM	2	wants to bring a conspiracy indictment, so be it, but it's beyond
12:32PM	3	the --
12:32PM	4	THE COURT: Mr. Reporter, please read back the question.
12:32PM	5	(The court reporter complied.)
12:32PM	6	THE COURT: All right. Objection overruled.
12:32PM	7	THE WITNESS: Again, I don't know who purchased the
12:32PM	8	handcuffs. The handcuffs were there at some point. We were
12:32PM	9	working with other activists to engage in the protected speech.
12:32PM	10	BY MS. GEORGE:
12:32PM	11	Q. And part of that was that they supplied you with
12:32PM	12	handcuffs?
12:32PM	13	MR. FELDMAN: Objection. That's number 4.
12:32PM	14	MS. GEORGE: He didn't answer it the first time.
12:32PM	15	MR. FELDMAN: She's badgering him.
12:32PM	16	THE COURT: Objection sustained. Please move on. I think
12:32PM	17	we've had enough about the handcuffs.
12:32PM	18	(Videotape played.)
12:34PM	19	BY MS. GEORGE:
12:39PM	20	Q. Mr. Pietrangelo, do you hear the people chanting, "I am
12:39PM	21	somebody. I deserve full equality"? Do you hear the people
12:39PM	22	chanting?
12:39PM	23	A. I hear people chanting, but I'm not making out the exact
12:39PM	24	chant.
12:39PM	25	Q. Per the tape, you mean?
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12:39PM	1	A. Right, just now.
12:39PM	2	Q. Did you hear them on April 20th, 2010?
12:39PM	3	A. There were people making noise in the crowd. I don't
12:39PM	4	recall if I heard specifically what they said. I wanted to
12:39PM	5	explain something before, which is that -- as part of this
12:39PM	6	hearing issue -- combat is very noisy, and I've been in two
12:39PM	7	wars. I've had M1 Abrams tanks fire their main guns right next
12:40PM	8	to me at the enemy. I've had rockets go off. I've had machine
12:40PM	9	guns fired, you know, repeatedly. It's very, very noisy. It's
12:40PM	10	not like in the movies. It's incredibly violent to your
12:40PM	11	hearing. And what has happened, as a result of my service, is
12:40PM	12	that -- it's not that I can't hear high and low frequencies,
12:40PM	13	it's that the sound just becomes mono, sort of solabic. It's
12:40PM	14	the detail, the definition I lose.
12:40PM	15	And the second thing I wanted to point out is something I
12:40PM	16	learned in my moviemaking days, my fascination with moviemaking,
12:40PM	17	is that just because a microphone is at one point and can pick
12:40PM	18	up sound doesn't mean that at another point that same sound is
12:40PM	19	or is not present, so it's a question of what sounds were
12:40PM	20	present at my location, not what sounds were present at the
12:40PM	21	camera location. But the -- again, I just wanted to point out
12:41PM	22	that I have a hearing deficit where some -- a lot of sounds
12:41PM	23	are -- I can hear the sound, but I can't hear the definition of
12:41PM	24	the sound.
12:41PM	25	Q. But you can hear me now; is that correct?
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12:41PM	1	A. Yes, but I'm also looking at you directly. If you
12:41PM	2	notice, I look -- I'm also looking at your lips as well, so --
12:41PM	3	Q. So you can't understand my question now? My back is to
12:41PM	4	you.
12:41PM	5	MR. FELDMAN: Objection, Judge. First of all, we're not
12:41PM	6	conducting a comparable experiment, and --
12:41PM	7	THE COURT: I agree. I don't think that's --
12:41PM	8	MR. FELDMAN: I object.
12:41PM	9	THE COURT: The objection is sustained. Please turn
12:41PM	10	around, Ms. George.
12:41PM	11	BY MS. GEORGE:
12:41PM	12	Q. So you said you could hear those people in the crowd; is
12:41PM	13	that correct?
12:41PM	14	MR. FELDMAN: Asked and answered.
12:41PM	15	THE COURT: Sustained.
12:41PM	16	BY MS. GEORGE:
12:41PM	17	Q. And do you acknowledge that the person giving the
12:41PM	18	warnings was closer to you than the people in the crowd?
12:41PM	19	A. Again, I don't recall -- what I recall is, during the
12:41PM	20	March 18th and during the April 20th, is that there was a car
12:41PM	21	that was broadcasting something.
12:41PM	22	Q. And that car was closer to you than the people who were
12:41PM	23	chanting in the crowd; isn't that correct?
12:42PM	24	A. Yes, ma'am.
12:42PM	25	Q. Same thing on March 18th video as well, correct?
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12:42PM	1	A. Yes, ma'am.
12:42PM	2	Q. Thank you.
12:42PM	3	A. At the point that it was cordoned off, yes, ma'am.
12:42PM	4	Q. That's what's shown at this point in time in the video,
12:42PM	5	correct?
12:42PM	6	A. Yes, ma'am.
12:42PM	7	(Videotape played.)
12:43PM	8	BY MS. GEORGE:
12:43PM	9	Q. On April 20th right here in the frame, it shows a fairly
12:44PM	10	tall, black gentleman with a hat on and a white shirt. Do you
12:44PM	11	see that person?
12:44PM	12	A. Closer to the fence, ma'am, or --
12:44PM	13	Q. Yes, and actually next to you in the frame.
12:44PM	14	A. Yes, ma'am.
12:44PM	15	Q. And on this day, April 20th, 2010, you had a handcuff key
12:44PM	16	as well, didn't you?
12:44PM	17	A. I don't recall, ma'am.
12:44PM	18	Q. Do you recall whether at the meeting handcuff keys were
12:44PM	19	handed out?
12:44PM	20	A. Each set came with its own key, ma'am.
12:44PM	21	Q. Thank you.
12:46PM	22	THE COURT: Ms. George, how much more of this is there?
12:46PM	23	MS. GEORGE: Your Honor, this is the last -- Mr. Choi is
12:46PM	24	the last person being arrested.
12:46PM	25	THE COURT: As soon as we finish, we're going to have to
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12:46PM **1** break for lunch.

12:46PM **2** MR. FELDMAN: Yes, sir. It's to 1:45, sir?

12:46PM **3** MS. GEORGE: Would you like me to stop it now?

12:46PM **4** THE COURT: Why don't you.

12:46PM **5** MR. FELDMAN: Do I have one minute for scheduling?

12:46PM **6** THE COURT: Let me tell you the good news. The two

12:46PM **7** detention hearings are not going forward. It doesn't mean I

12:46PM **8** don't need to call the case; indeed, I do, and I have a lock-up

12:46PM **9** which is only a few minutes, so it looks like we'll have most of

12:46PM **10** the afternoon.

12:46PM **11** MR. FELDMAN: I discussed that, my trial strategy with my

12:46PM **12** client, and I just do this for ease of the government. Also, for

12:46PM **13** the record, we subpoenaed the general counsel for Secret Service

12:46PM **14** following, we hope, the regulations. I have affidavits of

12:46PM **15** service in court. So I thank Your Honor for your -- I won't say

12:46PM **16** guidance, but your suggestion. But just in terms of strategy --

12:47PM **17** I don't know if Ms. George has much more time with the captain,

12:47PM **18** but our next witness will be the defendant.

12:47PM **19** THE COURT: Thank you.

12:47PM **20** MS. GEORGE: And, Your Honor, the government will request

12:47PM **21** a factual proffer from defense counsel as to the necessity of the

12:47PM **22** general counsel of the Secret Service.

12:47PM **23** THE COURT: After lunch.

12:47PM **24** (Discussion had off the record.)

12:47PM **25** THE COURT: I would like to go forward with the trial, but

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12:47PM **1** as soon as she tells me she's ready, we'll take the lockups and

12:47PM **2** the detention hearings, counsel will move out of the way, and

12:47PM **3** then we'll get back to this.

12:47PM **4** THE DEPUTY CLERK: I'll let her know.

12:47PM **5** THE COURT: Have a good lunch, everyone. Counsel, please

12:47PM **6** do not talk about the case.

12:47PM **7** MR. FELDMAN: But he can have lunch with us and talk about

12:47PM **8** the weather?

12:47PM **9** THE COURT: He could talk about anything that he would

12:47PM **10** like.

12:47PM **11** THE WITNESS: Yes, sir.

12:47PM **12** (Thereupon, a break was had beginning at 12:47 p.m.)

13

CERTIFICATE

14

15 I, Scott L. Wallace, RDR-CRR, certify that

16 the foregoing is a correct transcript from the record of

17 proceedings in the above-entitled matter.

18 -----

19 **Scott L. Wallace, RDR, CRR** **Date**

20 **Official Court Reporter**

21

22

23

24

25

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